

TGS CASE SUMMARIES FOR 1/10/20 ATTORNEY MEETING

**1. *Wayne Deloatch v. WCAB (City of Philadelphia)*
 No. 1684 C.D. 2018
 January 3, 2020**

Claimant worked as a firefighter for the defendant from December 12, 1988 until November 1, 2008. He was diagnosed with lung cancer in 2011. In December 2012 he filed a claim alleging he suffered from non--small cell lung cancer resulting from direct exposure to International Agency for Research on Cancer Group 1 Carcinogens.

During his career he worked at three fire stations, none of which had diesel-fuel-emission capture systems. During each shift the trucks in the station were run for 20 minutes at the beginning and end of each shift. Ceilings and walls were covered with soot and grime. Also, during his tenure he was involved in fighting 200-300 fires of all types. He sometimes used a self-contained breathing apparatus, but not always. After each fire his body would be covered in soot, and he would find soot in his nasal passages up to a week later after a fire. He did have a 30-35 year smoking history.

There were several decisions by WCJ that were appealed. There were remands and finally an appeal to the Court by the claimant after the last Workers' Compensation Judge decision was in favor of the employer.

On appeal, the claimant argued he was entitled to a statutory presumption under Section 301(f) of the Act and that the employer failed to rebut the presumption.

Section 301(c)(2) of the Act provides that a compensable injury includes any occupational disease as defined in Section 108 of the Act. Section 108 of the Act identifies a number of occupational diseases, including cancer, which is a compensable injury when it is caused by exposure to a known carcinogen which is recognized as a Group 1 carcinogen by the International Agency for Research on Cancer Group 1 Carcinogens.

Section 301(f) of the Act establishes a special evidentiary presumption that applies when the firefighter suffers an occupational disease in the form of cancer. The employee/firefighter must:

- (a) serve four or more years of continuous firefighting duties;
- (b) have had direct exposure to carcinogens referred to in Section 108(f) of the Act; and
- (c) have successfully passed examination prior to engaging in the firefighting duties and the exam failed to reveal any evidence of cancer.

This presumption may be rebutted by substantial, competent evidence that shows that the firefighter's cancer was not caused by the occupation of firefighting. The presumption can only be asserted if the claim is made within 300 weeks of last employment, although claims can be made by a firefighter within 600 weeks of the date of last employment.

Ultimately, the decision comes down to the medical evidence presented. Once the claimant has established that they were exposed to International Agency for Research on Cancer Group 1 Carcinogens in the course of employment and a doctor opines a link between the cancer and the carcinogens, they are entitled to the presumption. Medical evidence must then be presented by the defendants to rebut the presumption.

The WCJ makes a credibility decision on this point which then results either in the claimant receiving benefits or the employer being successful in fighting the claim.

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