

JJ White, Inc. v. Kader Yahawi (WCAB)

Cmwlth. Ct. of PA  
December 2, 2022

**Issues:** Whether the Board improperly concluded that claimant provided adequate and timely notice under the Act and whether the claimant voluntarily retired.

**Background:** Claimant was injured while lifting a bucket out of a hole, immediately feeling pain in his lower left side and back. The claimant stopped working and reported the injury to his union shop steward the same day. Claimant filed a petition alleging that he sustained a work injury. Employer argued that claimant did not satisfy the notice requirements of §313 of the Act as he only reported his injury to the shop steward who never reported the alleged work injury to employer.

**Holding:** The Commonwealth Court felt that the Board did not err or exceed its authority in overturning the WCJ's determination of credibility and the weight to be accorded evidence, as those are the prerogative of the WCJ, not the Board. The claimant carries the burden of demonstrating that timely notice of an alleged injury was given. Section 311 and §312 of the Act provide when and in what form a claimant must give notice to an employer in order to perfect his claim.

Notice of a work-related injury is required within 120 days of the injury. Notice of a work related injury may be given to the immediate or other superior of claimant, to the employer or any agent of the employer regularly employed at the place of employment of the claimant. A supervisory position is not the only requirement of the Act despite employer's policy. The act also allows an agent of the employer or other superior of the claimant to receive a report of injury. The evidence in this case demonstrated that the shop steward performed several functions as an agent of the employer for purposes of accepting reports of work injuries from union employees. The court determined that the union steward acted with authority on behalf of employer and there was no error in the Appeal Board's conclusion that the WCJ capriciously disregarded that evidence and failed to properly apply the provisions of §313 of the Act. It was found that the claimant provided adequate and timely notice under §313 of the Act.

The second issue has to do with forced retirement. When a claimant who has been forced into retirement as a result of a work-related injury may continue to receive workers' compensation benefits. An employer may seek a suspension of those benefits where the claimant voluntarily leaves the workforce rather than being forced into retirement because of the work injury. An employer bears the burden of showing that a claimant has retired. There is no presumption that a claimant has voluntarily retired from an entire workforce merely because the claimant has accepted some type of pension benefit. There is merely an inference that claimant has retired. The factfinder must evaluate all of the relevant evidence in determining whether a worker has retired from the workforce. If the employer produces sufficient evidence to support a finding that the claimant has voluntarily left the workforce, then the burden shifts to the claimant to show that there, in fact, has been a compensable loss of earning power. The WCJ's determination that claimant did not retire from the entire workforce was based in part on his testimony that he was unable to earn a living after his injury and he took the annuity as a lump

sum in order to live. Moreover, the claimant credibly testified that he still pays union dues and attends monthly union meetings.