

# Supreme Court Declares Impairment Rating Evaluations Unconstitutional

The most significant judicial decision to change workers' compensation law in the last 20 years occurred on June 20, 2017 when the Pennsylvania Supreme Court issued Protz v. Workers' Compensation Appeal Board (Derry Area School District), \_\_Pa. \_\_, A.3 \_\_ (No. 6 WAP 2016 and No. 7 WAP 2016, decided June 20, 2017).

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In Protz, the Supreme Court invalidated the impairment provision of the Workers' Compensation Act, which was previously used to limit injured workers' entitlement to ongoing benefits. Specifically, Section 306(a)(2) of the Act, which was added in 1996, provided that an injured worker's benefits could be capped at 500 weeks of future disability if after two years an impairment rating was performed, which found that the worker had less than 50 percent whole body impairment. Section 306(a)(2) permitted the use of the most recent edition of the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment and the Supreme Court ruled in Protz that this delegation of authority to an outside organization, namely the AMA, was an unconstitutional allocation of legislative authority and deemed invalid.

For the injured worker, this means that anyone who was subject

to an impairment rating may be entitled to a reclassification of their benefits to total disability without a 500-week limitation. It is important to remember that impairment ratings were not used extensively until after the year 2000. Whether the Protz decision applies to a specific case depends in large part on how long ago the worker's benefits were modified. Additionally, since the administration of impairment ratings was carried out in several different ways, an attorney who specializes in workers' compensation law, needs to review the facts of an individual case to determine whether any legal action needs to be taken.

Even if the 500-week period has expired, a reinstatement to total disability may be appropriate under certain limited circumstances. However, any case that was settled for a lump sum with a compromise and release agreement is unlikely to be subject to reopening.

Unfortunately, the Court did not provide in Protz any specific guidance on how to apply its ruling and we anticipate a series of additional appeals will be made to clarify the extent of its ruling. The bottom line is that to protect your rights as an injured worker you need to talk to your lawyer about whether the impairment rating that you were assigned is invalid. If that has occurred, a petition will be filed to reinstate your benefits to total disability.