

# **Job Applicant Was Not Employee Upon Required Medical Screen**

In 2006, Kathleen Moberg applied for employment at Twining Village and was told as a condition of employment that she was required to undergo a tuberculin test. After applying, she reported to the facility's outpatient room for the test. Moberg suffered an adverse reaction to the test and fell to the floor. She sought workers' compensation for her medical expenses, which included a CAT scan.

## **Moberg's Workers' Compensation Claim**

A Workers' Compensation Judge (WCJ) denied Moberg's claim for benefits, finding that she was not yet an employee at the time of the test. She appealed to the Workers' Compensation Board, which upheld the WCJ decision. She appealed the Board's decision to the district court.

The district court, while sympathetic to Moberg, found that she was not yet an employee at the time of the test. The court focused on the fact that Moberg had admitted on cross-examination that she was not yet an employee, notwithstanding that:

- A witness for the employer testified that only people the employer anticipated hiring were sent for the tests and that the tests were required "on hire"
- Moberg was eventually hired
- An employment relationship has previously been found to exist even where wages are not being earned

The court determined that the hire prerequisites were not a mere formality, Moberg was not an employee at the time of the test and therefore was not eligible for workers' compensation

benefits.

## **Other Recourse**

If the test was negligently administered, Moberg may have had a personal injury claim against the person who supervised the test or against the facility. However, she was injured in 2006 and it is now well past the deadline for bringing a personal injury suit in Pennsylvania. Injured parties, including job applicants or employees, should contact an experienced lawyer to discuss any and all potential avenues for demanding compensation for their injuries. There are important deadlines that may be missed while focusing on one avenue for relief to the exclusion of all others.

Related Source:

Kathleen Moberg, Petitioner v. Workers' Compensation Appeal Board, Respondent, No. 1767 C.D. 2009