

# **Court: Pleading the Fifth is not enough to cut off workers' comp**

An injured immigrant worker who refused to say whether he is authorized to live and work in the U.S. will continue to receive workers' compensation benefits even though he invoked the Fifth Amendment when asked about his immigration status. The Pennsylvania Supreme Court ruled recently that the workers' refusal to discuss whether he was legally able to work in the U.S. was not enough evidence for his benefits to be cut off.

The case involves a man who is originally from Ecuador but who moved to the U.S. more than 10 years ago. In 2008, he was picking mushrooms at a Pennsylvania farm when he suffered a herniated disk in his back. A doctor ordered him not to lift more than 15 pounds as a result, and his job at the mushroom farm ended because there was no work of that nature available.

The worker received temporary benefits, but they were cut off after a month. The worker then filed a claim for benefits. During a hearing in the matter, he invoked the Fifth Amendment's right to avoid self incrimination when asked questions about his work status.

Case law in Pennsylvania had previously held that an undocumented worker can still receive workers' comp even if he or she does not meet federal immigration laws, but that employers could seek to suspend benefits without meeting certain other requirements first. In this case, the court held that the man's employer had the burden to prove that he was not authorized to work in the United States. The man's invocation of the Fifth Amendment was not, on its own, enough evidence.

The court held that the man's birth in a foreign country and arrival here more than 10 years ago does not prove that he is not a citizen or ineligible to work in the U.S. It said that any inference drawn from the man's refusal to answer questions about his immigration status were "too speculative."□

**Source:** Supreme Court of Pennsylvania, Middle District, "[Cruz v. Workers' Compensation Appeal Board](#),"□ July 21, 2014