

Employment and changes to Workers' Compensation benefits

Many disabled individuals rely on the income provided by workers' compensation benefits in order to meet their day-to-day expenses. Eligibility for workers' compensation is subject to change, however. For example, if the person finds a new job, this may affect whether he or she can continue to receive workers' compensation (or how much those benefits may be). However, Pennsylvania law also states that if work opportunities are available, this may "jeopardize" the employee's receipt of benefits going forward.

The disabled person's employer may seek to have the employee's benefits reduced by showing that work is available to that person. Workers' compensation law allows for what is called "partial disability," which is where an individual's earning capacity is reduced (but not eliminated) because of a work-related injury. The amount of benefits received is based on the difference between what the person could expect to make before and his or her present ability to earn. This current earning capacity is determined by looking at jobs available in the employee's area that he or she could reasonably do based on his or her skills and physical capacity.

One issue that can arise in this situation is just what it means for a job to be "available." One recent case before the courts shows how difficult such a simple question can be. In *Phoenixville Hospital v. Workers' Compensation Appeal Board*, an employee of a hospital was injured on the job and began receiving workers' compensation benefits in 2003. In 2007, the hospital tried to have her benefits reduced, arguing that there was work available in her area that she was capable of doing. The employer provided evidence from a doctor, who

testified as to what the employee was capable of doing, and from a vocational counselor, who testified as to job openings he had found that met the employee's requirements. The employee, in turn, showed that she had applied for those jobs but had not been hired.

The case went all the way to the Pennsylvania Supreme Court, which addressed one question: whether work is "available" as required by law if the employee applies for all jobs the employer suggested but is unsuccessful. The Court found that an employee can show that a job is not "available" by providing evidence that an attempt was made to obtain the job, but that the attempt was ultimately not successful. The Court also pointed out that if it allowed employers to modify workers' compensation benefits by simply pointing to a job opening, then an employer could modify several employees' benefits based on one single job opening. Since, of course, only one of those employees could be hired for an isolated opening, the employer must show more.

It is important not to overstate what the Pennsylvania Supreme Court did. The evidence available will vary, and the facts of each individual case will make the biggest difference in whether an employer can modify benefits (or whether benefits can be obtained to begin with). If you believe you have a claim, or an employer is attempting to dispute or modify your existing one, you should contact a workers' compensation attorney right away.