Additional Notice of Ability to Return to Work form not needed when medical evidence comes from claimant's doctor.

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When a claimant's own physician is the source of medical evidence that the claimant can return to work, an additional Notice of Ability to Return to Work form from the employer is not necessary.
Judy Smith v. WCAB (Caring Companions, Inc. and Uninsured Employers Guaranty Fund); 417 C.D. 2012; filed Sept. 17, 2012; by Judge Covey

The claimant was employed as a home health aide when she suffered work-related injuries in October of 2008. Two months later, the claimant filed a Claim Petition against the employer and a Claim Petition seeking benefits from the Uninsured Employers Guarantee Fund (UEGF). In December of 2008, two weeks after these petitions were filed, the claimant received a job offer letter from the employer for a light-duty position. Thereafter, the claimant received a Notice of Ability to Return to Work form from the employer.

After the form was sent, the claimant was seen for an examination by a physician at the recommendation of her attorney. The physician concluded that the claimant could perform light-duty work on a permanent basis. Subsequently, the employer sent the claimant another letter offering her a light-duty position again and including in the letter the rate of pay and the number of hours per week. Prior to sending the letter, however, the employer did not forward a Notice of Ability to Return to Work form to the claimant.

The Workers' Compensation Judge granted the Claim Petition. However, he also determined that the employer was entitled to a modification of benefits with respect to the second job offer made to the claimant, which the Judge found to be a "good faith" offer to which the claimant did not respond. The claimant appealed to the Appeal Board, but the Board affirmed the Judge's decision.

On appeal to the Commonwealth Court, the claimant argued that a modification of benefits based on the second job offer made by the employer was improper since it was not preceded by a Notice of Ability to Return to Work form. According to the claimant, the second offer was made based on the release given by the claimant's physician and, therefore, triggered a duty on the part of the employer to send a new Notice of Ability to Return to Work form.

The court disagreed with this argument, holding that the Notice of Ability to Return to Work form was not necessary since the claimant's own physician determined that the claimant was capable of performing light-duty work. According to the court, the law recognized that there are circumstances where formal notification of a claimant's ability to return to work is not necessary, such as when a claimant is actually performing work or where an employer has knowledge that a claimant is working part time at another job.

> Side Bar: Although there may be situations where it is not necessary for an employer to send the claimant a Notice of Ability to Return to Work form, and although the law provides employers with some protection for this, nevertheless, employers should consider the Notice of Ability to Return to Work form as the "Miranda Warning" of workers' compensation. In other words, if an employer receives information that a claimant has been released to return to work, the issuance of a Notice of Ability to Return to Work form should be virtually automatic. Employers should follow the axiom of "It's better to be safe than sorry." Even if the circumstances are such that the employer is not required to formally notify a claimant of the ability to return to work, there is no harm in doing so.

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