

COMMONWEALTH COURT OF PENNSYLVANIA

**D & R Construction v. Workers' Compensation Appeal Board
(Suarez, Travelers Insurance Company, Uninsured Employers
Guaranty Fund, and T & L Development); Department of Labor and
Industry, Bureau of Workers' Compensation, Uninsured Employers
Guaranty Fund v. Workers' Compensation Appeal Board (Suarez,
and D & R Construction, T & L Development, and Travelers
Insurance Company)**

167 A.3d 837 (Pa. Commw. Ct. 2017) · No. Nos. 1558 C.D. 2016, 1578 C.D. 2016, 1574 C.D. 2016, and 1575
C.D. 2016 · Decided August 1, 2017

SUMMARY

The Commonwealth Court of Pennsylvania held that the Construction Workplace Misclassification Act could not be applied retroactively to determine whether the claimant was an employee or independent contractor because it altered substantive rights and lacked express retroactive language. The court also held that the Act could not be used as guidance in applying the traditional common-law employment-status factors. The court reversed the Workers' Compensation Appeal Board's order and remanded for analysis under the common-law factors alone.

CASE DETAILS

COURT	Commonwealth Court of Pennsylvania
WRITING FOR THE COURT	Julia K. Hearthway; Mary Hannah Leavitt, President Judge; Renée Cohn Jubelirer, Judge; Robert Simpson, Judge; Anne E. Covey, Judge; Michael H. Wojcik, Judge; Julia K. Hearthway, Judge; Joseph M. Cosgrove, Judge
JURISDICTION	Pennsylvania
DECIDED	August 1, 2017
DOCKET	Nos. 1558 C.D. 2016, 1578 C.D. 2016, 1574 C.D. 2016, and 1575 C.D. 2016
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petitions for review by D & R Construction and the Uninsured Employers' Guaranty Fund, granted by permission under 42 Pa. C.S. § 702(b), from the Workers' Compensation Appeal Board's interlocutory

	order reversing the workers' compensation judge and remanding for further proceedings.
STANDARD OF REVIEW	The court's scope of review was limited to whether constitutional rights were violated, an error of law was committed, or necessary findings of fact were supported by substantial evidence. The Board's legal conclusions were reviewed for error of law, while supported WCJ factual findings were required to be upheld and applied.
PRECEDENTIAL VALUE	Published precedential opinion of the Commonwealth Court of Pennsylvania
PARTIES	D & R Construction, Department of Labor and Industry, Bureau of Workers' Compensation, Uninsured Employers' Guaranty Fund v. Workers' Compensation Appeal Board, Hector Suarez, Travelers Insurance Company, Uninsured Employers' Guaranty Fund, T & L Development, D & R Construction

TOPICS

workers compensation statutory interpretation administrative law judicial review of agency action
appellate procedure

PRACTICE AREAS

workers compensation construction law administrative law statutory interpretation appellate procedure

QUESTIONS PRESENTED

1. Whether the Construction Workplace Misclassification Act may be applied retroactively to determine whether a claimant was an employee or an independent contractor when the injury occurred before the Act's enactment and effective date.
2. Whether the Construction Workplace Misclassification Act may be used as guidance in applying the traditional common-law factors governing whether an employment relationship exists.
3. Whether the Board's finding that Suarez was an employee could stand when the Board relied on Construction Workplace Misclassification Act criteria rather than exclusively on the traditional common-law factors.

HOLDINGS

1. The Construction Workplace Misclassification Act may not be applied retroactively in a workers' compensation matter to determine whether an individual was an employee or an independent contractor when the injury occurred before the Act's enactment and effective date.
2. The Construction Workplace Misclassification Act may not be used as guidance for applying the traditional common-law factors to determine whether an employment relationship existed.

3. The Board's order must be reversed and the matter remanded because the Board relied on Construction Workplace Misclassification Act criteria; on remand, the Board must determine employment status solely under the traditional common-law factors.

KEY QUOTATIONS

“Accordingly, we hold that the CWMA cannot be applied retroactively in workers’ compensation matters to determine whether an individual is an employee or an independent contractor.” (at 843)

“Thus, while some of the requirements set forth in the CWMA may be similar to some of the traditional factors under the common law for determining an employment relationship, the CWMA does not clarify the common law, particularly given the aforementioned differences.” (at 847)

“Therefore, we hold that the CWMA may not be used as guidance for the application of the traditional factors under the common law to determine whether an employment relationship existed.” (at 848)

FACTUAL BACKGROUND

Hector Suarez alleged that he sustained a work-related injury on August 28, 2010, while performing construction work for D & R Construction. D & R denied that Suarez was its employee and asserted that he was an independent contractor; Suarez also filed a claim petition against the Uninsured Employers' Guaranty Fund. The parties bifurcated the employment-status issue, and the WCJ found Suarez to be an independent contractor, while also finding that he had not been injured in the course of employment and had violated a positive work order.

PROCEDURAL HISTORY

Hector Suarez filed workers' compensation claim petitions against D & R Construction and the Uninsured Employers' Guaranty Fund, alleging an August 28, 2010 work injury. The workers' compensation judge concluded that Suarez was an independent contractor rather than an employee and denied and dismissed the claim petitions. The Workers' Compensation Appeal Board reversed, treated Suarez as an employee in part by applying the Construction Workplace Misclassification Act, and remanded for further proceedings. The Commonwealth Court granted permission to appeal, reversed the Board, and remanded for application of the traditional common-law employment-status factors.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Board must determine whether Suarez proved an employer-employee relationship solely under the traditional common-law factors, applying supported WCJ factual findings. If the Board determines that Suarez was an employee, it must address the remaining issues raised by the parties on appeal from the WCJ's order.

CASES CITED

- Johnson v. Workmen's Compensation Appeal Board (Dubois Courier Express), 631 A.2d 693 (Pa. Cmwlth. 1993)
- Page's Department Store v. Velardi, 346 A.2d 556, 559 n.5 (Pa. 1975)
- Montgomeryville Airport, Inc. v. Workmen's Compensation Appeal Board (Weingrad), 541 A.2d 1187 (Pa. Cmwlth. 1988)
- Alexander v. Department of Transportation, Bureau of Driver Licensing, 880 A.2d 552, 559 (Pa. 2005)
- Nicholson v. Combs, 703 A.2d 407, 411 (Pa. 1997)
- Universal Am-Can, Ltd. v. Workers' Compensation Appeal Board (Minteer), 762 A.2d 328, 330, 333 (Pa. 2000)
- Staron v. Workers' Compensation Appeal Board (Farrier), 121 A.3d 564 (Pa. Cmwlth. 2015)
- Department of Labor and Industry v. Workers' Compensation Appeal Board (Lin and Eastern Taste), 155 A.3d 103, 109 (Pa. Cmwlth. 2017)
- American Road Lines v. Workers' Compensation Appeal Board (Royal), 39 A.3d 603 (Pa. Cmwlth. 2012)
- In re Malick, 8 A.2d 494 (Pa. Super. 1939)
- Hammermill Paper Company v. Rust Engineering Company, 243 A.2d 389, 392 (Pa. 1968)

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