

**THE COURT HOLDS THAT CLAIMANTS MUST BE  
CAREFUL IN SETTLING THEIR WORKERS' COMPENSATION  
CASES AS THEY CANNOT SEEK ADDITIONAL BENEFITS MORE  
THAN THREE (3) YEARS AFTER A COMMUTATION.**

**I. INTRODUCTION**

The Commonwealth Court issued a Decision on October 11, 2006 indicating that a claimant must file a Review Petition seeking specific loss benefits within three (3) years of the date of payment of a commutation award for an original injury or his request for specific loss benefits will be denied.

**II. STATEMENT OF FACTS**

The claimant was employed as an iron worker on July 27, 1994 when he sustained an injury to his low back and thigh. He began receiving benefits. He underwent back surgery on December 29, 1994. Upon awakening from his surgical procedure, the claimant realized that he had suffered both weakness and loss of control of his right arm, which was attributable to nerve damage resulting from inadequate padding of his upper extremities during surgery. The claimant did not return to work. The claimant subsequently entered into a commutation of his benefits before the Workers' Compensation Appeal Board on July 10, 1996. He stipulated that he had earning power, and an entitlement to partial disability benefits of \$262.50 a week and received a lump sum payment of \$131,250.00 less attorney's fees. The claimant's medical treatment, however, remained open and an obligation of the employer. He sought medical treatment through his physician, Richard Bonfiglio, M.D. through September 7, 2000. On May 16, 2002, the claimant filed a Claim Petition asserting the loss of use of his right arm as a result of the complications of the December 1994 surgery. He requested specific loss benefits of 410 weeks plus a healing period of twenty (20) weeks. The employer defended the case arguing that the claim was barred by the three (3) year statute of limitations under Section 413(a) of the Act. The claimant offered medical testimony from Dr. Bonfiglio who said that he examined the claimant on December 14, 2000 and July 11, 2002 and the claimant had the loss of use of his right arm for all practical intents and purposes as a result of the back surgery of December 29, 1994. The employer provided contrary medical evidence. The employer's evidence established that the claimant's loss of use of his arm was attributable to the claimant's diabetes. The WCJ, however, accepted the testimony of Dr. Bonfiglio and awarded specific loss benefits. The judge concluded that the claimant's Claim Petition was not time barred because the date of injury for purposes of the statute of limitations was December 2, 2002 when the claimant learned from Dr. Bonfiglio that the loss of use of his right arm was permanent and job related. The employer appealed to the Workers' Compensation Appeal Board.

### III. REVIEW OF APPELLATE DECISIONS

The Board reversed the Decision of the WCJ reasoning that the claimant sought to amend the NCP to include a specific loss and did not file a Review Petition. However, they elected to treat the Claim Petition as a Review Petition. The Board did, however, reverse the judge's Decision indicating that since the claimant filed his petition six (6) years after the last payment of compensation on July 15, 1996 (shortly after the commutation hearing) that the claimant's attempt to amend the NCP was time barred. The claimant thereafter appealed to the Commonwealth Court. The Commonwealth Court affirmed the Workers' Compensation Appeal Board's Decision. They held that in this case the claimant knew or should have known that he had lost the use of his right arm shortly after surgery. Thus the discovery rule extending the statute of limitations was not applicable. Further, they held that the claimant under these circumstances had only three (3) years from the date of the last payment of compensation (which was shortly after the commutation) in which to seek a reinstatement of benefits by way of a Review Petition to modify the NCP. Since the claimant received his commutation amount in 1996 that was the last payment due on his disability benefits and once he received that payment, the statute of limitations under Section 413(a) began to run. Having failed to file a Review Petition to modify the NCP within three (3) years of that payment, the claimant was time barred from asserting a right to specific loss compensation for the loss of use of his arm.

### IV. ANALYSIS AND RECOMMENDATIONS

This cases certainly points out the pitfalls of settling a workers' compensation case where the claimant's injuries are far more extensive than that which was first identified in a Notice of Compensation Payable. The Court, however, has continued to maintain the rule of law that a claimant has three (3) years from the date of the last payment of compensation to seek additional benefits, especially after commutation of benefits.

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If you would like a copy of Raymond Seekford v. WCAB (R.P.M. Erectors), please do not hesitate to contact us.

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