



On The Move

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Union Prevails in Spousal COVID Workers Comp Claims

In the early days of the COVID pandemic, Local 234 took the lead in pressing SEPTA to institute safety protocols that could limit the spread of the virus among our members, who were required to work during the worst phases of the deadly pandemic. Unfortunately, before those protocols were put into place, a number of union members contracted and died from the disease. The Union contacted and brought the willing spouses of those members together with the Local's Workers Comp law firm, Pond Lehocky and comp petitions were filed on their behalf.

Pennsylvania Workers' Comp Law

Under Pennsylvania law, the dependent spouse of a worker who contracts and dies from an occupational disease is entitled to receive *weekly benefits for life*. The usual stumbling block to winning occupational disease cases is the need to establish that the employee contracted the disease *during the course of their employment*. Given the societal spread of COVID 19, many deemed this to be the major problem in winning Covid related cases. However, the claims of two Local 234 members were recently decided against SEPTA and in favor of the members' spouse.

Prior Pennsylvania cases determined that the medical evidence burden in "disease-type cases" such as tuberculosis, influenza and Lyme Disease can be met even **where exposure could have occurred both inside or outside of work**. What's needed is credible medical evidence showing that the worker is likely to have contracted the disease at work given the risks of exposure both inside and outside of the workplace.

Factual Testimony of Union Staff Key to Success

In both TWU cases, Union Staff representatives Ron Newman (Transportation) and Paul Southard (Maintenance) provided critical testimony.

Newman and Southard painted a picture of poor sanitary conditions in the workplace as far as cleanliness procedures, much of which required workers to be reassigned for cleaning purposes, which often did not occur due to manpower issues. They further corroborated a complete lack of contact tracing procedures, mitigative measures, and the banning of masks early in the pandemic. Of significant note was the testimony of Paul Southard as to the layout of the Elmwood location and close quarters in which employees ate, changed, and interacted on a daily basis. As noted by Ron Newman, there was no formal reporting system for positive tests early in the pandemic, and he would often hear about them second hand before reporting them to SEPTA's System Safety director, whose testimony corroborated much of what Newman had to say.

Expert Medical Testimony Nails the Cases

As in all workers compensation disputes expert medical testimony is often decisive. In the TWU cases, Dr. Michael Silverman, a board-certified physician in internal medicine and infectious

diseases testified on behalf of the TWU claimants. Based on the factual testimony provided by Newman and Southard, Dr. Silverman offered his expert medical opinion as to whether the TWU members contracted COVID 19 “during the course of their employment.” He concluded that they had.

Silverman, for example, reviewed the list of reported cases at Midvale Depot for the period from February 25, 2020 to April 26, 2020. The case logs showed 28 individuals with positive COVID tests, with 20 of them testing positive between 3/18/20 and 4/13/20. Dr. Silverman concluded that this showed “widespread transmission and exposure – high risk for exposure to COVID-19 in that facility.”

Silverman also testified that the number of positive tests coupled with the lack of masks indicated widespread Covid being presented at Midvale, leading him to conclude that this “places the risk significantly to acquire COVID while working in this facility.” He stated that in his expert opinion the TWU member acquired Covid while working for SEPTA, noting that COVID was virtually “rampant in this facility.”

Finally, in Dr. Silverman’s expert opinion the employee contracted Covid at work and passed away as a result. Dr. Silverman explained that in further corroboration of his conclusion that the employee having contracted Covid-19 at work is that his spouse and sons never tested positive for Covid-19 in the weeks surrounding his hospitalization and passing. Given that he had quarantined when he got the virus, while those in the home did not get infected, makes it highly unlikely he would’ve been infected in the home as opposed to work.

TWU Cases Set a COVID-19 Precedent

No doubt these TWU cases have set an important precedent under Pennsylvania workers comp law for evaluating occupational disease claims of those exposed to COVID-19 in the workplace. In the short term, these cases will more than likely result in settlements of any other SEPTA cases pending in the workers comp system and will influence the outcomes of other COVID related claims in Pennsylvania and elsewhere.

Local 234 salutes the TWU spouses who had the strength and determination to pursue their right to compensation against SEPTA and the law firm of Pond Lehocky whose deft handling of these cases made victory possible.

We Must and We will