

Presentation by Hon. Ingrid L. French, A.S.J.W.C.

Pschunder-Haaf v. Synergy Home Care of South Jersey: What the Appellate Division Decisions Mean Regarding Imposition of Penalties and Payment of Expert Fees

Statute governing the award of attorney fees:

N.J.S.A. 34:15-64...a..... The official conducting any hearing under this chapter may allow to the party in whose favor judgment is entered, costs of witness fees and a reasonable attorney fee, not exceeding 20% of the judgment; and a reasonable fee not exceeding \$400 for any one witness,

c. A fee shall be allowed at the **discretion of the judge of compensation** when, **in the official's judgment**, the services of an attorney and medical witnesses are necessary for the proper presentation of the case

Statute governing the imposition of penalties and costs:

N.J.S.A. 34:15-28.2when a party or counsel to a workers' compensation action fails to comply with an order in that action, a judge of compensation **may**, in addition to any other remedies provided by law: a. **impose costs**..[and]...b. **impose additional fines and other penalties** on parties or counsel in an amount not exceeding [\$5000] for unreasonable delay, with the proceeds of the penalties paid into the Second Injury Fund...and, f. **take other actions deemed appropriate by the judge of compensation** with respect to the claim."

A Judge's perspective on what will make his or her decision as to the imposition of fees, costs and penalties "appeal-proof"

1. **Motion to Enforce/Motion for Sanctions:** See Appellate Decisions: Ferguson v. Trenton Board of Education, Docket No. A-3053-10T4, 2012 N.J Super. Unpub. LEXIS 227 and Patel v. Showboat Casino, Docket No. A-3739 – 12T3, 2014 N.J Super. Unpub. LEXIS 1172, Barbarevech v. Johns-Manville Products Corp., 143 N.J. Super. 31, 362 A.2d 609 (App. Div. 1976), [*20] certif. denied, 73 N.J. 58, 372 A.2d 323 (1977)
 - a. Hearing the Motion
 - i. Findings/Conclusions
 - b. Versus "temporary remand" or "remand"
2. What is the Appellate Court looking for; i.e. what is....:
 - a. Substantial deference
 - b. Arbitrary
 - c. Capricious
 - d. Unreasonable