



**State of New Jersey**

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT  
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MEMORANDUM

January 30, 2012

To: Judges and Attorneys

From: Peter J. Calderone, Director and Chief Judge

Subject: Second Injury Fund

Recently Judge Delores McNamee made a presentation to the Burlington County Bar Association on topics that included the Second Injury Fund. Judge McNamee provided the attendees with a well-developed outline of Second Injury Fund procedures and legal analysis entitled Handling Second Injury Fund Cases. I believe that Judge McNamee did an outstanding job in developing a clear, concise and usable document for understanding and presenting Second Injury Fund cases.

Attached is a copy of Judge McNamee's presentation that I wanted to share with you.

Attachment

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AD-18.14 (R 05-10)

## **HANDLING SECOND INJURY FUND CASES**

### **1. Be PREPARED**

- a. Have a Total Perm Report which addresses not only the last compensable disability but also the alleged pre-existing disabilities and which says Petitioner is 100% permanently and totally disabled
- b. Have records for the last compensable injury and on alleged pre-existing disabilities including prior orders and doctor/hospital/operative records including **FAMILY DOCTOR'S RECORDS—DON'T SEND ANY RECORDS TO THE DAG UNLESS SHE SPECIFICALLY REQUEST A COPY**
- c. Know the wage and rate
- d. Know dates and rate of Temp paid by Respondent especially **THE FINAL DATE OF TEMP**
- e. Have the ACE information including names and dates of birth for Auxiliaries and payments for the Auxiliaries
- f. Have the Social Security Decision and supporting medical records-**KNOW THE ONSET DATE OF SSD**
- g. Have Pension information including the type and breakdown between pension and annuity-**KNOW THE ONSET DATE AND TYPE OF PENSION(Service, Accidental or Ordinary Disability)**
- h. Have the Disability Pension Application and supporting medical records
- i. Have Temporary Disability Benefits Lien information-**KNOW DATES WHEN TDB WAS PAID**

- j. Have other Lien info such as Private Health Care Insurance Liens or Union Health Care Liens
- k. Have Medicare Conditional Payment information
- l. Have copies of Unpaid Medical Bills you are asking Respondent to pay
- m. Have Third Party Information including status of the case or amount of award and name of attorney handling Third Party Case and the amount of Respondent's lien to date broken down into payments for Meds, Temp and Perm
- n. Have Child Support Lien information

**2. DETERMINE IF THE PETITIONER IS TOTALLY AND PERMANENTLY DISABLED**

- a. Parties may want to hear Petitioner's testimony or meet informally with the Petitioner
- b. If the reports in the case are old, new reports mostly likely will be needed before the judge will agree to start testimony

**3. LOOK AT THE VALUE OF THE LAST COMPENSABLE ACCIDENT FIRST**

- a. Respondent is responsible to pay the full value of the last compensable accident
- b. If the last accident in and of itself renders the Petitioner totally and permanently disabled, then the Second Injury Fund does not pay benefits
- c. See **Garry Quick v. Discount Oil Company and Second Injury Fund** (unpublished App.Div. Opinion reversing Trial Judge who found Second Injury Fund Liability) In this case Petitioner had a serious last accident requiring three cervical surgeries including a fusion. Petitioner's young daughter was diagnosed with cancer before the Petitioner's accident and died subsequent to the accident. In addition to testimony about Petitioner's orthopedic problem, the court also heard from a psychiatrist who testified that Petitioner

had psychiatric disability not only as a result of his daughter's illness and subsequent death but also because of his work related injury. The trial Judge found that the Second Injury Fund was responsible for the psyche disability that related to the daughter's illness prior to the Petitioner's last compensable accident. The Second Injury Fund DAG argued that the Petitioner was totally disabled from the last compensable accident alone. The Trial Judge found SIF liability and the Appellate Division reversed finding Respondent alone responsible for the Total Permanent Disability Award.

**4. PRE-EXISTING DISABILITIES ALLEGED MUST MEET THE DEFINITION OF PERMANENT PARTIAL DISABILITY SET FORTH IN N.J.S.A. 34:15-36 AND AS SUCH THERE MUST BE A LESSENING OF THE PETITIONER'S ABILITY TO FUNCTION IN THE WORK PLACE OR IN ACTIVITIES OF DAILY LIFE OR BOTH**

- a. Don't just add up the value of prior injuries or prior awards especially if small and/ or remote in time (in **Perez v. Pantasote, Inc., 95 N.J. 105, 109 (1984)** the New Jersey Supreme Court recognized "the validity of a medical finding of a permanent injury may decrease with the passage of time.")
- b. Examine how the Petitioner was functioning prior to the last compensable accident
- c. See **Ronald Nisivoccia v. County of Essex and Second Injury Fund** (unpublished App. Div. Opinion reversing and remanding because Trial Judge denied the Second Injury Fund's Attorney the right to cross examine medical experts) **NOTE:** On remand the case resolved without Second Injury Fund involvement, despite the fact that the Petitioner had multiple prior awards. The Petitioner testified that prior to the last compensable accident he had been working not only in his job as a Corrections Officers but was also working at various part time jobs. The Petitioner also testified that he was physically fit and active and did 900 sit ups a day and worked out seven days a week lifting weights prior to the last compensable accident.

**5. PREPARE AND REVIEW ORDER FOR TOTAL DISABILITY WITH SECOND INJURY INVOLVEMENT CAREFULLY**

- a. Ask for help with calculating rates and dates at the conference with Second Injury Fund Deputy Attorney if needed---**MAKE SURE ALL PARTIES AGREE ON THE DATE OF TOTALITY AND REMEMBER THE SECOND INJURY FUND CAN NOT COMMENCE PAYING BENEFITS BEFORE THE DATE ON WHICH THE VERIFIED PETITION FOR SECOND INJURY FUND BENEFITS HAS BEEN FILED**
- b. Use Interactive Order Form on the Division's Web Site to prepare Order
- c. Use **OSCAR** or other appropriate program to calculate dates
- d. Check info given to you by DAG—they appreciate someone double checking their calculations
- e. **Make sure you review the completed Order before giving it to the DAG and Respondent's Attorney or giving it to Court**
- f. Fax completed order to Second Injury Fund DAG at 609-984-1940 for her to review in advance of the hearing date and make any corrections provided by the DAG