



## **Background**

Claimant is employed by Employer as a police officer. Claimant was diagnosed with COVID-19 (COVID) on August 2, 2020. She reported her diagnosis to her supervisor, Sergeant Wood.<sup>2</sup> Claimant told Sergeant Wood that she believed she contracted COVID at work. After August 4, 2020, Claimant was paid wage continuation benefits, referred to as “E-time.” Claimant stopped receiving E-time in March of 2022 and began using her accrued sick and vacation leave. WCJ’s Decision, Finding of Fact (F.F.) No. 1(a)-(c).

Employer issued a Notice of Compensation Denial (NCD) on January 25, 2022. WCJ’s Decision, Procedural History. On March 2, 2022, Claimant filed the instant Petitions, alleging that Employer “unilaterally terminated benefits in January 2022 after accepting the claim for COVID with the payment of wages in lieu of benefits as a matter of law.” Certified Record (C.R.) at Nos. 2, 3. The matter proceeded before the WCJ.

## **Claimant’s Evidence**

Claimant testified on her own behalf at a video hearing held before the WCJ on May 16, 2022.<sup>3</sup> Claimant related that she was 59 years old and had been a police officer for 22 years. At the time of the COVID outbreak, she was assigned to the Center City District and detailed to the Philadelphia Convention Center. WCJ’s Decision, F.F. No. 1(a).

At the time of her testimony, Claimant had not returned to work due to shortness of breath. She indicated that she previously had problems with “auto

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<sup>2</sup> Sergeant Wood’s full name is not set forth in the Certified Record.

<sup>3</sup> Claimant’s deposition can be found in the Certified Record at No. 13.

immune [sic] stuff” and interstitial lung disease, but these health issues were under control prior to her COVID diagnosis. WCJ’s Decision, F.F. No. 1(c).

On cross-examination, Claimant admitted that she was aware of Employer’s Injured on Duty (IOD) system and that she assumed E-time was being used because of the “uniqueness of the pandemic.” WCJ’s Decision, F.F. No. 1(e).

### **Employer’s Evidence**

In its defense, Employer offered the August 15, 2022 deposition testimony of Barry Scott, its Deputy Finance Director for Risk Management (Risk Management) and its Risk Manager (Mr. Scott) and the August 25, 2022 deposition testimony of Lieutenant Donald Lowenthal, the Philadelphia Police Department’s (Department) Infection Control Officer (Lieutenant Lowenthal).<sup>4</sup>

Mr. Scott testified that he has served in his position since 2003. Risk Management administers several different types of disability benefits to Department police officers, including workers’ compensation, Heart and Lung benefits,<sup>5</sup> and benefits pursuant to Act 17.<sup>6</sup> When Department police officers believe they have sustained a work injury, they report the injury to their supervisor and the supervisor

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<sup>4</sup> Mr. Scott’s deposition can be found in the Certified Record at No. 20. Lieutenant Lowenthal’s deposition can be found in the Certified Record at No. 21.

<sup>5</sup> The Heart and Lung Act, Act of June 28, 1935, P.L. 477, *as amended*. 53 P.S. §§637-638, provides public safety officers with their full salary while they recover from temporary, work-related ailments.

<sup>6</sup> Act of April 29, 2020, P.L. 118, No. 17, 35 Pa.C.S. §§57a01-02. Act 17 provides that a person who is eligible for Heart and Lung Act benefits who is temporarily incapacitated from performing his or her duties following a COVID diagnosis may receive up to 60 days of Heart and Lung Act benefits.

fills out a “COPA II” form.<sup>7</sup> From there, the supervisor and the Department’s third-party administrator, PMA Management Corporation (PMA), investigate the alleged injury, and PMA determines if the claim is compensable. In turn, PMA notifies the employee whether their claim has been accepted or denied and what, if any, benefit they are to receive.

On March 23, 2020, following a stay-at-home order issued by the Employer, Risk Management, along with other members of City government, began “addressing how to protect City workers from contracting COVID as well as ways to minimize the spread in the community as it impacted City operations.” Deposition of Barry Scott at 10. Mr. Scott related that in the early days of COVID, Risk Management did not have a written policy for police officers who believed that they contracted COVID at work. Furthermore, Mr. Scott testified, at no time throughout the pandemic was there a Risk Management written position that precluded police officers from making claims if they believed they contracted COVID at work.

With regard to E-time, Mr. Scott then explained that “E[-]time, or excused time, is a timekeeping tool that -- which enables an employee to continue to receive their salary when they can’t or they’re not at work for whatever reason.” Deposition of Barry Scott at 12. To Mr. Scott’s knowledge, employees on E-time historically continued to receive their regular salary and accrue benefits and did not deplete their personal leave time. From Risk Management’s perspective, if a police officer received E-time because of COVID, it was not an acknowledgment that he or she had contracted COVID at work; rather

[i]t was meant to signify that [Employer] was not trying to punish these officers and that it was -- so that they were

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<sup>7</sup> “COPA II” is shorthand for “City of Philadelphia Accident, Injury, Illness Form.” See Deposition of Barry Scott at 7.

not losing anything by being in this status, that this was, you know, a situation we were not expecting but we were looking to have a situation where, you know, folks who succumbed to this condition were not -- weren't financially penalized by the condition.

*Id.* at 13. Mr. Scott emphasized that E-time was not sick leave or personal time off but was a “sort of an administrative timekeeping category.” *Id.* at 14. Mr. Scott confirmed that if a police officer filled out a COPA II form and the investigation determined that he or she did contract COVID at work, they would not be put on E-time but would be placed on a disability benefit under the employee disability program.

Mr. Scott testified that in January 2022, Employer became aware that several Department police officers who claimed disability due to long-haul COVID were still out of work and receiving E-time. Employer decided to transition the officers from E-time to Act 17 benefits. Mr. Scott indicated that once their Act 17 benefits ceased, the officers would have to use their accrued sick time if they did not return to work. It was after this change that many of these officers filed for workers' compensation benefits although they had not previously sought disability benefits from Employer related to their COVID diagnoses.

On cross-examination, Mr. Scott acknowledged that he is not a Department employee and that Risk Management “provides direction to departments across the City in order to minimize the risk to City employees from hazards on the job[,]” but it does not have “a managerial authority to control the actions taken in a particular department.” Deposition of Barry Scott at 21. Mr. Scott further acknowledged that in 2020 and 2021, Risk Management was not actively involved in contact tracing “which might have identified cases in the Department.” *Id.* at 25. Finally, Mr. Scott indicated that he was never advised that Department supervisors

were telling officers that they could only receive E-time for COVID and that COPA II forms were unnecessary.

For his part, Lieutenant Lowenthal testified that he had been serving as the Department's Infection Control Officer since 2007. He explained that prior to March 2020, he was involved in coordinating care and testing of police officers who had bodily fluid exposures. In March 2020 the nature of his position changed from handling bodily fluid exposures to "nothing but C[OVID]." Deposition of Lieutenant Donald Lowenthal at 10. Lieutenant Lowenthal became responsible for communication with Department officers who may have been infected with COVID. Lieutenant Lowenthal described various COVID policies implemented by Employer beginning in March 2020. While Lieutenant Lowenthal did not write the policies, he did interpret them and answer questions. Lieutenant Lowenthal indicated that when asked by Department supervisors how to report an employee who was out with COVID on the Daily Activity Report, he indicated that the policies provided that those employees should be listed as being on E-time, regardless of whether the COVID was work-related or non-work-related. Further, he related that if a Department supervisor asked him whether they should fill out a COPA II form for an officer who claimed to have contracted COVID from work, he would advise the supervisor to do so. Lieutenant Lowenthal acknowledged that the first time a Department policy indicated that a COPA II form should be completed when an officer believed he or she contracted COVID at work was in July 2022.

### **WCJ's Decision**

Based on her review of the evidence, the WCJ found Claimant's testimony to be "generally credible." WCJ's Decision, F.F. No. 9. Per the WCJ,

Claimant candidly testified that she was aware of the IOD system and did not contact Employer or her Union when she realized she was not receiving IOD benefits. The WCJ reiterated Claimant's testimony that she believed E-time was being used because of the unique nature of the pandemic. *Id.*

The WCJ also found the testimony of Mr. Scott credible that, from a risk management perspective, E-time was intended to ensure that employees diagnosed with COVID were not financially penalized by the condition. Furthermore, the WCJ credited Mr. Scott's testimony that E-time was not intended to compensate employees who had work-related COVID. WCJ's Decision, F.F. No. 10.<sup>8</sup>

Ultimately, the WCJ concluded that Claimant failed to meet her burden of proving that Employer's payments of E-time were intended to be payments in lieu of compensation for a work injury in the nature of COVID or that Employer was therefore estopped from disavowing liability for Claimant's alleged work injury. WCJ's Decision, F.F. No. 12. The WCJ further concluded that Claimant failed to prove that Employer violated the Act when it unilaterally terminated Claimant's E-time in January of 2022. *Id.*, F.F. No. 13.

Claimant appealed and the Board affirmed. Claimant now appeals to this Court.<sup>9</sup>

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<sup>8</sup> The WCJ also found Lieutenant Lowenthal credible with respect to Employer's COVID policy statements. WCJ's Decision, F.F. No. 11.

<sup>9</sup> This Court's review is limited to determining whether the WCJ's findings of fact are supported by substantial evidence, whether an error of law was committed, or whether constitutional rights were violated. *DiLaqua v. City of Philadelphia Fire Department (Workers' Compensation Appeal Board)*, 268 A.3d 1, 4 n.5 (Pa. Cmwlth. 2021). "Substantial evidence" is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. **(Footnote continued on next page...)**

## Discussion

On appeal, Claimant argues that the E-time payments she received were made in lieu of compensation for her work-related COVID, that Employer's payment of E-time was an admission of liability, and that Employer's payment of E-time benefits estopped it from denying liability under the Act. Claimant further argues that the WCJ erred in denying her Penalty Petition because Employer accepted liability for a work-related injury, and Employer violated the Act by unilaterally terminating payments for her work-related injury. In the recent case of *Brown v. City of Philadelphia (Workers' Compensation Appeal Board)*, 330 A.3d 12 (Pa. Cmwlth. 2025), this Court performed an exhaustive analysis of the identical issues raised here, and issued a well-reasoned opinion affirming the Board. *See also Clarke v. City of Philadelphia (Workers' Compensation Appeal Board)* (Pa. Cmwlth., No. 508 C.D. 2024, filed January 17, 2025); *Tymes v. City of Philadelphia (Workers' Compensation Appeal Board)* (Pa. Cmwlth., No. 464 C.D. 2024, filed January 29, 2025).<sup>10</sup> For the reasons set forth in *Brown*, *Clarke*, and *Tymes*, we conclude there was no error of law or abuse of discretion in denying Claimant's Petitions.

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*Waldameer Park, Inc. v. Workers' Compensation Appeal Board (Morrison)*, 819 A.2d 164, 168 (Pa. Cmwlth. 2003).

<sup>10</sup> Unreported memorandum opinions of this Court filed after January 15, 2008, may be cited for their persuasive value pursuant to Rule 126(b) of the Pennsylvania Rules of Appellate Procedure, Pa.R.A.P. 126(b), and Section 414(a) of the Court's Internal Operating Procedures, 210 Pa. Code §69.414(a).



Accordingly, the order of the Board is affirmed.

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MICHAEL H. WOJCIK, Judge

Judge Dumas did not participate in the decision of this case.

