

IN THE

SUPREME COURT OF THE UNITED STATES

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GREGORY STANLEY ROBERTS

pro se Petitioner

No. 18-9480

INSERVCO INSURANCE SERVICES, INC.

Respondent

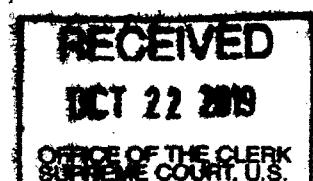
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REHEARING PETITION

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RESPONDANT**



PETITION FOR REHEARING

October 7, 2019 this Court entered the following order in the entitled case: The petition for a writ of certiorari is denied.

I request a rehearing for the following reasons.

AMENDMENT 1st. *Freedom of speech-right to petition the government.*

AMENDMENT 5th. *Due process-double jeopardy/Res-Judicata*

AMENDMENT 6th. *Protect the right to be fair-retain counsel*

AMENEDMENT 14th *Due process clause-Equal Protection Clause*

- (1) The Commonwealth Court of Pennsylvania decided the case based on issues not proposed or briefed by either party: Department of Public Welfare/ Norristown State Hospital or my attorney Kenneth S Saffren.
- (2) Located in the Writ of Certiorari, all Questions Presented and evidence to support the questions, were excluded when the respondent filed their appeal to the Commonwealth Court of Pennsylvania. My attorney's response to the appeal not only omitte the question ask, he also omitted the Statement of Fact, and he verified their appeal argument . All proceedings after the initial claim, became the sole arguement without conflict and without my notification.
- (3) The following pages will show how relevant including the Question Presented would have altered the Commonwealth Court Opinion and Decision.



QUESTIONS PRESENTED

1. The petitioner was injured on three occasions while performing his duties at Bensalem Youth Development Center. (DPW). The second injury, the agency determined that Workers Compensation Insurance Service should approve Act 534 benefits. At this time light duty work was available. Why did the Insurance Service deny Act 534 and light duty? *see appendix I.*
2. Six months before I retired, my Employer and the Insurance Carrier requested that I have a Independent Medical Examination of their choice. My examination determined that I should be on Modified duty. Why did the Insurance Carrier deny this duty? *see appendix G.*
3. Workers' Compensation Appeal Board in a order, **DENIED** the Defendant right to appeal decision dated, 7/28/2010. The respondent ignored the Order and three weeks later filed this matter to Commonwealth Court of Pa, 8/17/2010. Can the defendant file an Appeal without authority? *see appendix F. page8*
4. June 21, 2011, I received a Memorandum Opinion from the Commonwealth Court. Stated, Petitioner Department of Public Welfare/Norritown State Hospital v. Respondent Worker's Compensation Appeal Board(Roberts) Dated 10, 2010. At no time the petitioner(Roberts) was employed at Norristown State Hospital. Should submiting a wrong litigant void this appeal? *see appendix A.*
5. The Factual Backround in this matter was litigated in the

United States District Court February 21, 2002. Pennsylvania Department of Public Welfare did pay settlement in this matter in 2003. To re-litigated this matter in 2010 would this action constitute **res-judicata, collateral estoppel?** After 10 years should this claim be barred due to **Statue of Limitation?** **see appendix C**

6. The 14th Amendment limits the action of state and local officials. Equal protection under the law to all citizens, which include **(Due Process)**. I was not informed that this matter was being litigated in the Commonwealth Court until I received the suspension memorandum June 2011. This action shows continued retaliation and abuse of the respondent, with the assistance of my attorney. Should I believe in the legal principle of full, fair and transparency?
7. Is it fair to not view the defendant's appeal or to see my attorney's response to the appeal? Is it fair that my attorney neglected to inform his client that he lost my files? Is it fair that after repeatedly asking for my files, I had to request the respondent's appeal and my attorney's response from Jenkins Law Library for \$80.00? Is it fair to request my attorney to appeal the decision to suspend my benefits and he choose to file a penalty petition? **see appendix K.**
8. My Insurance Carrier's argument of, I voluntarily left the work-force when I retired. Evidence will show that my employer Barred me from entering my place of employment. If the Insurance Carrier denies me the 534 Act, denies my modified duties and my employer denies me access to work, is there another choice other than retirement? **see appendix J.**
Is it fair that the Commonwealth Court was unaware of all above?
9. After pointless pages on a Appeal to the Commonwealth Court, why did the respondent claim to have offered

\$90.000 Authority to petitioner? see appendix.E

10. All Questions above was concealed from the Court of the Commonwealth of Pa. Therefore all proceedings that followed never received this evidence. Would concealing consequential evidence alter a decision?

The Commonwealth Court decided the case based on issues not proposed by either party.

Commonwealth of Pennsylvania DPW/Norristown State Hospital, represented by J. Brendan O'Brien who filed this appeal to the Commonwealth Court omitting the STATEMENT OF THE CASE.

My attorney Kenneth S. Saffren in response to the appeal omitted the STATEMENT OF THE CASE.

This consequential evidence clearly shows that respondent was forced to retire due to work related injuries. SEPTA v. WCAB.
(Henderson) 543 Pa. 74 (1995)

STATEMENT OF THE ISSUES

1. Did the Commonwealth Court err in holding the Respondent voluntarily withdrew from the workforce when he retired?

STATEMENT OF THE CASE

On June 6, 1997, while on duty at Bensalem Youth Development Center(hereinafter to as BYDC) was assaulted by a client.

According to policy, officials referred Claimant to their medical facility at Warminster General Hospital. The physician on duty, evaluated the Claimant and determined that the Claimant needed medical treatment and should return on modified duty basis. On June 9th 1997, Claimant was suspended without pay pending investigation of assault on the client. Claimant's medical treatment was discontinued. Claimant was

fortunate to receive medical treatment from Dr. Murphy. On July 11, 1997, Claimant was terminated from his position of BYDC. On November 11, 1997, a EJAC Hearing was held in Harrisburg, Pennsylvania, and Claimant was reinstated. Claimant return with a doctor's note that state total incapacitation. Officials at BYDC denied the doctor's request and Claimant was forced to return to full-time duty, without restrictions. At this time, Claimant was prescribed celebrex for the pain by Dr. Murphy. Claimant was prescribed colonopasm for shakes by Dr. Cohen. Claimant has severe pain in his neck and, at times, his left side of his face would have paralysis. Dr. Kanoff and Dr. Zohar also requested that Claimant receive sedentary duty. BYDC insisted full duty, full-time without restrictions.

Judge Joseph E. Hagan entered an Interlocutory Order, "In the course of this litigation, the parties are directed to adhere strictly to the provision of Pa. Workers Compensation Act. The parties are reminded that there is no provision in the Act requiring a 'full release without restrictions/without residuals' by a physician before worker may return to work. If a physician releases a worker to work and such work is available, the failure to permit the return to work or the insistence upon unreasonable or unauthorized requirements prior to the return to work may result in the imposition of penalties or the finding an unreasonable contest necessitating the award of attorney's fees as a cost of litigation. You may not appeal this Interlocutory Order." Evidence will show that sedentary or modified duty

was available, yet I was denied. Claimant was forced to return to full duty, full-time without restriction.

On March 31, 1998, while on-duty, a client assaulted Claimant in the lavatory, choked him so hard he left his finger prints on Claimant's neck which aggravated existing injury. Claimant was also hit repeatedly on the top of his head and kicked in the groin. The incident was reported, the agency advised Claimant to seek treatment at Warminster General Hospital. Claimant received a memo from the agency on April 6, 1998, which stated that they determined that 534 benefits should be approved.

On April 11, 1998, Dr. Murphy cleared Claimant to return to restricted duty on a trial basis. Claimant was forced to return to full duty, full-time without restrictions. On August 9, 1998, while momentarily alone, Claimant attempted to restrain two 19-year-old clients from assaulting each other. Claimant's co-worker restrained one of the clients and Claimant had the other. Before co-worker could secure his client, Claimant's client elbowed Claimant in the head knocking his head into a steel door. He felt nausea and a slight pain to his neck. Claimant reported the incident, left the facility and went directly to Dr. Murphy. On September 14, 1998, a meeting was held by BYDC officials regarding Claimant's status. With all the injuries that Claimant sustained, they decided that Claimant can return to work full duty, full-time without restrictions. The same day, September 14, 1998, a memo was posted at the Security Staff Control Center, which indicated, "Gregory S. Roberts, would not be permitted on

agency's grounds." Claimant returned to work on August 17, 1998, with a note from Dr. Murphy, which stated, "Against my medical advice, Gregory S. Roberts may return to work, full duty, full-time without restrictions."

A meeting was held by BYDC officials and a union representative who determined that the note from Dr. Murphy was not acceptable, because Claimant's doctor did not release him to full-time duty. Claimant received a letter from BYDC officials which stated that allowing Claimant to return to work will be a threat to himself, co-workers and students. On September 17, 1998, another memo was forwarded to the Security Staff Control Center, which indicated, "Gregory S. Roberts, is not permitted to enter the facility grounds until further notice. Failure to following the directive may result in disciplinary action and/or including removal."

On June 9, 1998, Claimant returned to work with another note from Dr. Murphy, which indicated patient was no longer under his care and patient may return to work. This note was not acceptable. For no reason, official called the State Trooper and Claimant was escorted off the BYDC grounds in front of his co-workers. It appears efforts to force Dr. Murphy to go against his medical opinion was unsuccessful.

Claimant believed he had no choice but to retire. His health and his freedom were at risk.

At the Deposition of the IME doctor on June 5, 2003, Richard J. Levenberg, M.D., stated that he found

Claimant to be capable of full-time sedentary work. It appears that this a very important witness because on January 28, 1999, six months prior to Claimant retiring, the Employer requested that Claimant receive an Independent Medical Examination from doctor, Richard J. Levenberg, M.D., who found Claimant to be capable of full-time sedentary work. And yet, Claimant was denied sedentary work when, in fact, sedentary work was available. Certainly, there is sedentary work in a facility as vast as the Department of Public Welfare, however, at no time was Claimant ever offered or suggested to have any type of light duty or alternative work within the restrictions laid out by Dr. Murphy. It is for this reason that Judge Burman originally accepted Claimant's argument with regard to this and said that any modification or suspension of his benefits was inappropriate considering there was vast job opportunities available and none were offered to Claimant. The Appeal Board affirmed this decision only to be reversed by the Commonwealth and then remanded to the Appeal Board.

It should also be noted that throughout the course of the Commonwealth's Decision, filed on June 21, 2011, the Order states repeatedly that the Norristown State Hospital is the Employer and that Gregory S. Roberts is the Employee. This is incorrect as it appears that the Commonwealth of Pennsylvania assumed that Gregory S. Roberts did work for the Norristown State Hospital at some time. Gregory S. Roberts **never** worked at Norristown State Hospital in any capacity, he was employed by the Department of Public Welfare

at the Bensalem Youth Development Center. There is a discrepancy in that certainly there would be, again, many job opportunities available as stated in Judge Burman's original Decision for light duty status which Claimant was never afforded.

Finally, Defendant did not follow procedure in this case as well. Should the court follow the case of *Shuster v. W.C.A.B.* (Pa Human Relations Commission) 745 A.2d 1982 (Pa. Commwlth. 2000), there's a holding in that Decision where the Board renders an opinion adverse to a party but that party cannot appeal to the Commonwealth Court at the time the opinion is issued because the Board also remands matter, the party cannot appeal the Judge's Decision following remand directly to the Court but must first file an appeal to the Board. This order and case law was rendered on 7/28/2010, the Defendant appealed to the Commonwealth Court on 8/17/2010. In the *Roberts* case, that is also what occurred and there should have not been a direct appeal to the Commonwealth until the remand to the Appeal Board had been taken care of. Therefore, there was a premature appeal to the Commonwealth Court previously and therefore since they did not follow procedure, in conclusion, once again, Claimant's benefits should be reinstated retroactive from the date of suspension of his benefits from the Commonwealth Court.

IN CONCLUSION

AND NOW, this day of April , 2000, this petition is Granted, Defendant is hereby **ORDERED** and **DIRECTED** to pay claiment full wage loss compensation from September 3, 1998 with interest in 10% per annum pursuant to the Act, to pay all reasonable and necessary medical expenses due to the work-related injury promptly upon their presentment according to the Act.

This was the Order of Judge Joseph E Hagan. As stated in my Statement of Issue, I retired due to work related injuries, Judge Joseph E Hagan in his Order also stated that this was a work-related injury. He also stated that this was an unreasonable contest. (Writ of Cert-Appendix D)

February, 20th, 2002, with the same fact of this case, Judge Edmund Ludwig denied the defendant motion to dismiss. Violation of the First Amendment, 14th Amendment and Retaliation. (Writ of Cert- Appendix C)

July, 28th 2010, Worker's Compensation Appeal Board denied their Modification Petition and stated that it was unreasonable contest, agreeing with Judge Martin Burman's, dated May 29th, 2007. Cited, (Shuster v. WCAB (Pa. Cmwlth.2000) (Writ of Cert-Appendix F)

All above was Omitted from Pennsylvania Commonwealth Court and all proceedings after. This case lacked the adversary idea of Due Process of the Law.

For this Court to deny my Writ of Certiorari or to deny my Rehearing Petition is un-sound. When this Court decides this matter, will they give an Opinion of their decision, and will they also omit Question Ask and the Statement of the Case. Finally, this matter is of public issue. To allow a one sided court litigation is unthinkable. To continue this pattern of litigation, I'am afraid the Court System would be Compromised and Due Process of the law would never exist.

Sincerely

Gregory Stanley Roberts

10/18/2019

Gregory S. Roberts

CC.

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