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Administrative Decision Writing

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ADMINISTRATIVE DECISION WRITING

Honorable Irvin Stander ^{1/}

- I. OUTLINE OF DECISION WRITING TECHNIQUES
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- III. REFEREE'S DECISION, KRAWCHUK V. PHILADELPHIA ELECTRIC CO.
- IV. KRAWCHUK V. PHILADELPHIA ELECTRIC CO., SUPREME COURT OF PENNSYLVANIA, 439 A.2d 627, 632 (1981)

^{1/} Workers' Compensation Referee, Philadelphia. Irvin Stander, a frequent contributor to this Journal, was recently honored by the Pennsylvania Bureau of Workers' Compensation on the occasion of the 60th anniversary of his admission to the bar. The materials herein were presented to the Workers' Compensation Law Section of the Pennsylvania Bar Association, October 5-6, 1989, and are reprinted here by permission.

I.

DECISION WRITING TECHNIQUES

- (1) Characteristics of a Hearing Judge and his decisions:
 - (a) Only group in legal system who regularly write and issue decisions in every case.
 - (b) Decision is the result of all which has gone into a judge's management of the case.
 - (c) No strict rules for writing decisions. We are discussing suggested guidelines.
 - (d) Decision writing is a science as well as an art.
 - (e) Best background for new judge: Read and study as many decisions of prior cases as possible for style and content.
- (2) Requirement of a decision:
 - (a) Basic statute usually lists such requirements.
 - (b) Generally, it must include Findings of Fact and Conclusions, and the reasons therefor on all material issues of fact and law presented on the record and an appropriate order, sanction or denial.
 - (c) Include a brief summary of proceedings (record).
- (3) Know the applicable law and decided cases.
- (4) Make sure the record is closed.
- (5) Organize and review trial notes, transcripts and exhibits.
- (6) Consider the constituency to whom and for whom the decision is written.
- (7) Use good grammatical English and be mindful of style:
 - (a) Short v. long.
 - (b) Practicability v. scholarship.
 - (c) Repetition v. non-repetition.

- (d) Sentences: short v. long; simple v. complex.
 - (e) Language and word supply: short v. long; simple v. legalese.
- (8) Adopt format for repetitive situations:
- (a) Tailor forms to fit the situation.
 - (b) Constantly revise and update forms.
 - (c) Control use of canned paragraphs; make them sound like your own writing.
- (9) Choose the major thrust of the case--the point on which the case turns; and address it in decision.
- (10) Be frank and candid in assessment of evidence, but avoid being outspoken or blunt.
- (11) Presentation techniques:
- (a) Summary analysis v. rehash.
 - (b) Quotations from evidence--desirable or not?
 - (c) Comparison of witnesses on a particular subject.
- (12) Careful reviewing before issuing:
- (a) Have your writing checked by others.
 - (b) Proofreading and correction before signing the final product.
- (13) Punctuality in decision writing:
- (a) Some jurisdictions have mandatory deadlines.
 - (b) Consider effect of delay on parties.
 - (c) Production necessary to control mounting backlogs.
 - (d) "Justice delayed is justice denied."

(14) Structuring Findings of Fact:

- (a) Findings--the heart of a decision.
- (b) Outline findings before writing decision.
- (c) Include "reasons or basis" therefor.
- (d) Choose the important "hard facts" as the control points for credibility and address them in decision.
- (e) Pass on credibility--fact-finder's function.
- (f) Base findings on "substantial" evidence. Some states call it "competent" evidence.
- (g) Negative findings may be helpful to show absence of evidence on a particular point.
- (h) Try to cover the "weight" given to the various items of evidence.
- (i) Make specific and not merely conclusory findings.
- (j) Explain in decision why contrary evidence is being disregarded or rejected.
- (k) Never treat evidence as "non-existent." Identify and pass on even weak evidence.
- (l) Must include all findings necessary to resolve the issues raised by the evidence, and which are relevant to the decision.

(15) Conclusions of Law:

- (a) Should flow inevitably from Findings of Fact.
- (b) Must cover legal principles inapplicable under circumstances of case. Show applicable provisions of statute.
- (c) Must be consistent with findings of fact and with each other.
- (d) Must address quantum of supporting evidence on which based.

(16) Order, Award Or Disallowance:

(a) Must follow provisions of basic law.

(b) Must be consistent with findings and conclusions.

II.
DRAFTING PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Since we are all faced with the agonizing task of making tough decisions, I must tell you about the three Referees, the kind who wear striped shirts and carry whistles, who were discussing the problems of calling close decisions on the football field. The first one asserted, "I calls them as I see's them." "Naw," said the second, "I calls them as they are." "You're both wrong," exclaimed the third, "Until I calls them, they don't even exist." Well, so much for judicial infallibility. Because you are called upon to draft proposed Findings of Fact and Conclusions of Law for the Referees, you must share in these problems with them.

1. Several years ago, I served on our Statewide Committee drafting the first set of Rules of Procedure for Referees, and we solicited and received comments from the public sector. Let me read you from some of the fan mail we got about Referees' decisions. Here's one from a large Pennsylvania steel corporation: "We annually review several hundred decisions by workers' compensation referees. Throughout those decisions, is a lack of specific findings of fact to resolve issues raised by the evidence placed before the Referees. Instead, well over half of the decisions rendered by the Referees contain 'boiler plate' findings of fact and conclusions of law, which ignore important and pertinent issues that govern the decisions being rendered." As you know, this violates the Court's mandate in Page's Department Store v. Velardi--464 Pa. 276 (1975).

2. Here's part of a letter from a prominent lawyer in the compensation field: "We have no problem with the Referee requesting a legal brief or memorandum to aid the Referee in review and consideration of a case. However, to allow or require the parties to submit proposed findings of fact and conclusions of law unfortunately has led to the practice by some referees to blindly adopting the entire proposed findings of one party or another. Thus they do not fulfill their responsibility to review the evidence and reach an individual judgment." My comment is that when the Referee blindly adopts your Findings, he also blindly adopts your mistakes!

3. Here is an excerpt from the recent Pennsylvania Commonwealth Court opinion in Universal Trucking, Inc. v. Workmen's Compensation Appeal Board (Hassell) 535 A.2d (1988):

"Section 418 of the Penna. Workmen's Compensation Act requires a referee, to whom a petition is assigned for hearing, to make findings of fact, conclusions of law, and an award or disallowance of compensation. The referee's fact-finding function has been

interpreted to include a requirement that the referee make findings of fact on all essential issues so that the Board and this court have an opportunity to exercise meaningful review. A synopsis or summarization of evidence is not fact-finding." We ought to pay attention to these complaints and suggestions!

Let me give you several important factors you should consider when you write proposed Findings and Conclusions. These apply especially to lawyers who draft such proposed Findings for the Referees, and these Rules are therefore applicable to you, as well as to the Referees.

First: You should choose the major thrust of the case, the "point on which the case turns one way or the other," and address yourselves to an analysis and determination of that issue. This process is not always easy but once you have found this point, or question, your task of writing good findings will be greatly facilitated.

Second: While you should be completely frank, sincere and candid in your assessments of the evidence, you should avoid being too outspoken or blunt in your comments. Language like the "Referee is not persuaded by Dr. Smith" is better than "Dr. Smith is a liar." So be careful in drafting your proposals.

Third: Punctuality in decision writing is of prime importance. While the Referees, until fairly recently, had no mandatory time limits, they are deemed necessary under principles of proper case management. Promptness is required to avoid the common complaint that "justice delayed is justice denied." The Referees' failure to act promptly has devastating consequences on Claimants because of financial hardships, the onset of "compensation neuroses," and the prolongation of disability through postponement of returns to work during the pendency of the proceedings. However, under the old state of the law, you couldn't rush a Referee since, according to our Superior Court in Myers v. Department of Labor and Industry and Clement J. Cassidy, W.C. Referee, the Referee was not subject to mandamus proceedings to compel the issuance of his belated decisions because of quasi-judicial immunity. Since then, however, a consent decree was entered by the U.S. District Court for the Middle District, in Eck v. Knepper, et. al. Civil Case Number 86-1780, which mandates that the Referee must issue his decision no later than 90 days after the closing of the Record--including the filing of Briefs. This means we now have two important time constraints--Briefs within 45 days under Ref. Rule 131.61, and Decision within 90 days under the Eck mandate. Since our Director is a party in the Eck case, he has directed our full compliance with its terms, in order to avoid contempt citations.

Fourth: Let's now consider the quantity and quality of necessary evidence to support good findings. In any discussion on Compensation Hearings, we refer to terms like "substantial evidence," "competent evidence," and "capricious disregard of competent evidence." Since you must assess the evidence by these terms, you should know how they are defined by the Courts. Here are some definitions, taken from court decisions:

(a) "Substantial or competent evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

(b) Another court definition states: "Evidence is substantial if a reasonable man, acting in a reasonable fashion would have used it in arriving at a pertinent decision."

(c) Here's a definition in the negative: "Reviewable as incompetent is only testimony which is so uncertain, equivocal, ambiguous or contradictory, as to make administrative findings of fact merely conjecture that fails to meet the test of substantiality."

(d) We learn from the recent case of Russel v. W.C.A.B., 550 A.2d 1364 (1988), that the old standard of "capricious disregard of competent evidence" is still alive, but only where no evidence was presented to the Referee to support the prevailing party, namely, there is no evidence upon which to apply the substantial evidence test. In such cases the appropriate scope of review is whether the Referee erred as a matter of law or "capriciously disregarded competent evidence." Therefore, reversal is mandated because there is a "willful and deliberate disregard" of apparently trustworthy, competent relevant testimony, or evidence which one of ordinary intelligence could not possibly challenge or entertain the slightest doubt as to its truth.

While there is much subjectivity in these definitions, they do provide us with some useful signposts and guidelines in our difficult task of assessing factual evidence.

Fifth: Now let's get down to structuring the findings of fact, and consider these items:

(a) As one court put it: "Findings of Fact are the polestar for our judicial review. Without them, the court wanders aimlessly through the record." Perez v. U.S. Steel, 416 N.E. 2d. 864 (Indiana, 1981). So--

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(b) Outline your findings before writing them.

(c) Be sure to indicate the "reasons therefor."

(d) Pick out the important "hard facts" in the case as the control points in the determination of credibility, and feature them in your findings.

(e) Your findings must be based on sufficient competent or substantial evidence. Keep in mind those definitions I gave you earlier.

(f) Pass on the credibility of witnesses, because that is the fact-finder's function, and your proposals must consider this.

(g) While the Referee may draw inferences, such inferences must be based on competent substantial evidence in the record, and only in the record.

(h) Explain why contrary evidence is being disregarded or rejected. The finder of fact has a duty to consider all the evidence, although he may choose to give some little or no weight.

(i) Avoid long quotations from the evidence. It is better to make a summary analysis than a rehash. Also be sure to state the weight suggested by you for the evidence. As one court said, "Findings should be an evaluation of the evidence, and not just a recital."

(j) On the question of practicability vs. scholarship, you don't have to write a law review article for every proposed decision. While Referees must consider their production demands, don't overlook the benefit of a short "discussion" in the decision placed between the Findings and Conclusions where you can state the reasons more fully, and cite the case support for your proposals.

(k) A Federal Court opinion outlines the fact-finding duty in this significant language: "The Hearing Judge must spell out clearly and with precision his specific factual findings, and indicate the weight given by him to the various pieces of evidence, so that a reviewing court can determine the substantiality of his findings without fishing through the entire record."

Sixth: Here are some examples of good and bad findings based on the principles we have discussed:

The principle is:

(a) Make specific, not merely conclusory, findings. For example,

"Injury arose in the course of Claimant's employment."

This is a bad finding because it is really a statement of the ultimate facts, and is insufficient. It is actually a Conclusion of Law. Here's how it should read:

"Claimant was going to Burger King for lunch, and was driving employer's automobile. Claimant was instructed to pick up machine parts for the employer while on the way to Burger King."

This is good, because it shows supporting evidentiary facts.

Here's another principle:

(b) Even uncontradicted evidence can be rejected, but unless there is an explanation for its rejection (e.g., lack of witness credibility, inherent implausibility, etc.) an appellate court might reverse due to a seemingly arbitrary decision.

Here's another principle:

(c) Never treat evidence as non-existent. Identify even weak evidence, and evaluate it.

For example, assume that one unqualified doctor says "yes" on causation issue, and three reputable doctors say "no." Here's a bad finding:

"We have examined the record, and found that there exists no substantial evidence that the Claimant's work-related accident caused his injury."

Here's the way it should read:

"We have considered the testimony of Dr. X to the effect that Claimant's injuries were caused by the incident in question, but feel that such testimony is amply outweighed by the convincing testimony of Drs. A, B and C."

(d) Here is another good example of a specific reference to testimony contained in the record and set forth on a summary basis: "Dr. So-and-So, who is (Claimant's or Defendant's) treating (or examining) doctor testified that Claimant had such-and-such movement, or range of motion in his injured joint, and was not disabled from performing sedentary work, and I accept his opinion (or I am persuaded by his opinion)."

The conclusions of law made by the Referee would then follow that the "Claimant was able, in fact, to perform some kind of sedentary work."

Seventh: Here are some general principles derived from the case law on Findings of Fact, Conclusions of Law and Final Orders:

(a) The Findings of Fact made by the Referee must also be consistent with each other, with his Conclusions of Law, and with his Final Order.

(b) Decisions are subject to reversal where the findings are insufficient, or where the Referee failed to make a finding of fact on a crucial issue necessary for the proper application of the law.

(c) They are also subject to reversal where the medical testimony is not sufficient to establish a medical causal connection --e.g., where there is a lack of unequivocal medical testimony, the finding of fact may be subject to reversal.

(d) The reasoning employed in drawing the ultimate findings should be clearly set forth. Here is a quotation from a prominent text on workers' compensation: "It has been held that the findings of a hearing officer must be definite, and sufficiently so, in order to enable an appellate review body to determine whether or not the finding is supported by substantial evidence."

(e) As to the extent of the exposition of the fact-finder's reasoning, one court opinion suggests that "findings of fact in a workmen's compensation proceeding need not be so specific as to provide a thorough explanation of the thought processes of the fact-finder, but they must be sufficient to demonstrate that the fact-finding function was performed." However, the pending suit in the Federal Court in the Beth-Energy Mines case is attempting to force us to give the reasons for our decisions. This case is now in the preliminary stages but poses a serious problem for you and the Referees if the plaintiff's complaint is sustained.

(f) It is thus apparent that mere conclusory terminology in the findings is not sufficient. Such findings are a disservice to the parties and appellate bodies, and will probably result in a reversal or Remand Order.

(g) Don't forget that many of the items the Referees decide are really mixed questions of law and fact, and therefore subject to review on the question of error; for example, the ultimate determinations of a common-law marriage, employer vs. independent contractor, dependency on decedent, suicide, and assault by third parties. These are really questions of law. The appellate groups are bound by the Referee's factual determinations, but can review for legal error in their legal conclusions.

Now let's discuss conclusions of law and orders. First, as to Conclusions of Law. Here are the Rules:

1. They must flow inevitably from the findings of fact.
2. They must cover the legal principles applicable under the circumstances of the case, and must show the relevant provisions of the statute.
3. The conclusions must be consistent with the Findings of Fact, and with each other.
4. They must also address the quantity and quality of the supporting evidence on which they are based.
5. The Referee's Orders, Awards or Disallowances must be consistent with his Findings and Conclusions, and must necessarily follow the basic provisions of the Act.

We don't often get Findings of Fact and Conclusions of Law which are judicially approved, and even quoted by our Appellate Courts. However, that is exactly what happened in the landmark case of Krawchuk v. Philadelphia Electric Company, where the Supreme Court not only reversed the Board and the Commonwealth Court, but also reinstated the Referee's Findings of Fact and Conclusions of Law, and actually quoted them at large in its opinion. Your handout materials include the Referee's Findings of Fact and Conclusions of Law in the Krawchuk case, and also the opinion of the Supreme Court which quotes the Referee's decision. Don't ask me who wrote it, but please read it!

Now, let's consider the distinction between findings of fact and conclusions of law more carefully!

When you have a statement in a Referee's decision which is supported by testimony or evidence, it is a "finding of fact." For example, assume that Claimant is a credible witness and testifies that immediately after being injured on the job on April 4, 1989, he told his employer that he had just injured his right hand on a punch press, a statement from which the Referee can find "that on April 4, 1989, Claimant informed the Defendant of an injury to his right hand while operating Defendant's punch press." This is a finding of fact concerning the issue of notice.

What makes it a finding of fact is that the content of the statement:

*First: Must be derived from the credible evidence; and

*Second: Must be a statement concerning an event, or in the case of medical testimony, a statement concerning a condition at a certain point in time.

On the other hand, a statement in the Referee's decision which is supported by the Workers' Compensation Act, the Rules of Evidence (e.g., the hearsay rule, the doctrine of relevance, etc.), Constitutional law, or decisional law, is a "Conclusion of Law."

For example, the conclusion of law controlling the above Finding of Fact on Notice would be stated in the following manner pursuant to Sections 311 and 312 of the Act.

"The Claimant has met his burden of proving that on April 4, 1989, he provided the Defendant with timely notice that he had received an injury to his right hand while operating Defendant's punch press."

In summary on this point, a Finding of Fact is supported by evidence, while a conclusion of law is supported by the applicable law.

There exists, however, a situation in which a Referee will make a statement in his decision which is a mixed Finding of Fact and Conclusion of Law. In such a case, the statement should appear as both a finding and a conclusion.

For example, where the cause of disability is not obvious, the law requires medical evidence to establish causal connection. The Finding of Fact (quoted from the Krawchuk case) would read:

"Dr. X, a cardiology specialist, testified as to the causal relationship between the stress occasioned by Claimant's heavy workload and the fatal coronary Claimant suffered on April 4, 1985. The Referee finds Dr. X's expert medical testimony to be persuasive in establishing that there was a causal relationship between the stress events at work and Claimant's subsequent death from myocardial infarction."

The Conclusion of Law (also quoted from the Krawchuk case) would read:

"Claimant's decedent has met her burden of proving, by unequivocal and competent medical evidence, that there was a direct causal relationship between the unusual stress, strain and exertion of the decedent's employment and the fatal coronary attack suffered by the decedent on April 4, 1985."

Based on my 18 years of service as a Referee in Workers' Compensation, I have the obligation of making these observations on the subject of Findings of Fact:

First: Some of our Referees actually enthuse about the fact that they prefer to decide their cases immediately, while the evidence is fresh in their minds, citing that old nostrum that "Justice Delayed is Justice Denied."

While this is their prerogative since Referees' Rule 131.61 seems to make Briefing and suggested Findings optional instead of mandatory, by using "may" instead of "shall," I personally disagree with their procedure because I find that carefully measured consideration of the case with the aid of Counsel's Briefs and suggested Findings, is a more desirable method. That old saying about "Justice Delayed" should be modified by another concept which holds that "Justice Hurried is Justice Buried."

Second: Make sure your suggested Findings are keyed to the testimony by citations to the Record, but the citations must be accurate because they are--believe me--checked by the Referees for accuracy, and if the Referee misses them, they'll surely be caught by the Workers' Compensation Appeal Board on appeal!

Third: Recently, I read a comprehensive 14-page Brief that completely "petered out" when it came to the Suggested Findings, where I got nothing more than five conclusory findings which were really Conclusions of Law, and yet the language of the Brief provided the substance for more than 15 excellent findings which the attorney should have used.

Fourth: Your proposed Findings and Conclusions should not be repetitive or prolix (meaning verbose or long-winded). We don't appreciate a set of Findings where each and every one begins with the same litany: "Dr. Jones testified on June 26, 1989, and said "so-and-so," repeated, over and over again, in every finding concerning Dr. Jones' testimony,

Nor do we like proposed Findings which all start with the repetitive language, in every Finding, stating: "From a careful review of the evidence in the Record, the Referee finds that so-and-so," repeated ad infinitum, and ad nauseam. Please spare us this rubbish, and get down to the facts without the repeated and unnecessary preliminary verbiage.

Fifth: I am convinced that the parties in a Workers' Compensation proceeding have an absolute right, as a "procedural due process" matter, to file Briefs, at the closing of the testimony, under existing statutory and case law, and I have so expressed myself

to the other members of our P.B.I. Manual Drafting Committee, and have asked them to consider supplementation of our text on the section on "Concluding Procedures" to indicate the absolute right of the parties to file Briefs. This was done on Page 152 of our new manual; and further, to request the Rules Committee to add similar supplementation to Ref. Rule 131.61 concerning Briefs. Here are the authorities to support my Conclusion: (1) Section 506 of the Act of April 28, 1978, found in 2 Pa. C.S.A., Section 506, which states that all parties shall be afforded an opportunity to submit Briefs, prior to adjudication by a Commonwealth agency; (2) Section 35.191 of the Pa. Rules of Admin. Practice and Procedure, which also uses the word "shall" in providing for the fixing of time for filing Briefs; and (3) the case of Bengal v. State Bd. of Pharmacy, 279 A.2d 374 (1971), which holds that the opportunity to file Briefs in administrative proceedings is not only a statutory requirement, but, in the alternative, is a constitutional "due process" requirement, as well.

Our new Rule 131.101 does not adopt my suggestion, but is a great improvement over the old Rule 131.61 by spelling out more details about the Content of Briefs.

Sixth: You should consider your Brief and Findings akin to your speech to the Jury in a Civil or Criminal case. It's your final appeal to the ultimate Finder of the Facts--the Referee. As such, you have certain serious obligations in preparing your Brief and Findings, which I want to share with you, as follows:

(a) Don't try to butter up the Referee with Findings which commence with the same obsequious clause, "Your Honor finds this. Your Honor finds that." Please spare us this garbage. If you want to read the sad consequences of a wholesale adoption of such obsequious Findings--adopted by the unsuspecting Referee--read the Commonwealth Court's Opinion in the case of Visintin v. W.C.A.B., 561 A.2d 372 (June 29, 1989), where the Court quotes this unseemly verbiage, without further comment, and then takes the Referee apart, bit by bit, by its sharp attack on the merits of his findings. So, please don't be obsequious. It's really sickening, and most of the blame should be charged to the attorneys who drafted these Findings, although the fault should be shared by the adopting Referee.

(b) Be careful that when you propose Alternative Findings and conclusions (a very useful device), you skillfully point out to the Referee the Alternative Nature of these suggestions. We know of an apocryphal case where the Referee carelessly adopted both sets of these alternative Findings in his decision. I blame both the Referee and the lawyer for failing to carefully label and examine these proposals.

(c) I've seen Decisions which range from skimpy four-sentence Findings and Conclusions to 14-page law review articles. So please, try to strike a happy medium with reasonably detailed, but not exhaustive and exhausting 50-page recitations. Remember, we must read them, not just weigh them. Above all, don't quote the testimony at large, just summarize it.

(d) So please remember, the Referee must rely on your honesty and accuracy--so don't let us down!

By now you think you are completely educated on this complex subject, and you believe you're ready for graduation. But before you get too cocky, let me tell you about that rich tycoon who owned a wonderful horse, and vowed he would get an honorary degree for this animal from a university. He advertised the fact that any university who bestowed an honorary doctorate of laws on his horse would get a Million Dollar endowment for its Development Fund. Of course, all the Ivy League Schools like Harvard, Princeton, Penn and Yale turned down this preposterous offer flatly, but then the President of Moronic College from Squedunk, Pa. heard of this magnanimous offer and greedily informed the tycoon that his college would grant his honorary degree.

On the day of the convocation, the President of Moronic College bestowed an honorary Doctorate of Laws on the tycoon's horse.

Then, a veritable storm of protest came from the other college presidents, but the President of Moronic College stoutly affirmed his decision, and stated "This is the very first time that an institution of higher education has bestowed an Honorary Degree on both ends of a horse!"

So before you get too cocky about your expertise on the subject we just discussed, please remember this wonderful story about the horse--I mean both ends!

III.
REFEREE'S DECISION
KRAWCHUK VS. PHILADELPHIA ELECTRIC CO.

Record

Claimant filed a Fatal Claim Petition in October, 1973, alleging the Claimant's decedent sustained a work-related fatal myocardial infarctory in the course of his employment for the Defendant on May 10, 1973. Defendant filed a responsive Answer denying the material allegations of the Claim Petition.

After careful consideration of all the testimony, exhibits, hospital records and medical testimony, the Referee hereby makes the following Findings of Fact, Conclusions of Law and Order.

Findings of Fact

1. Claimant's decedent John Krawchuk, age 52, on or about May 10, 1973, was employed by the Defendant, The Philadelphia Electric Company.
2. At the time his average earnings were \$473.00 per week.
3. Rose Marie Krawchuk and John Krawchuk were married on January 8, 1944, and were still married at the time of John Krawchuk's death on May 10, 1973, and residing in the same household.
4. Two male children were born of this marriage, both of whom were over the age of 21 years at the death of Claimant's decedent.
5. Shortly after 12:01 A.M. of May 10, 1973, Claimant's decedent sustained a fatal myocardial infarction at his home.
6. Claimant's decedent was taken to Chestnut Hill Hospital where he was pronounced dead on arrival.
7. At the time of his death, Claimant's decedent was working under great and unusual stress stemming from the work he was doing in connection with a special project known as "PMS4," and a treatise he was to deliver, on behalf of his employer, in California a few days later.
8. Claimant's decedent had been selected for the special project known as "PMS4" because he was conscientious and because of his special abilities.

9. In addition to the special project, and other duties, Claimant's decedent had been working for several weeks on the preparation of a treatise to be delivered in California.

10. All of the above activities constituted additional and unusual exertion on the part of Claimant's decedent, arising from and related to his employment.

11. On the day prior to the heart attack, Claimant's decedent was examined by Dr. Albert J. Kraft, who at that time found the Claimant's decedent to appear tired and under great stress due to his added workload.

12. For five hours prior to the heart attack, Claimant's decedent had been working at his home on the treatise which he was to deliver on behalf of his employer at a convention to be held in California a few days thereafter.

13. Dr. Kraft, a cardiology specialist, testified as to a causal relationship between the stress occasioned by Claimant's decedent's heavy workload and the fatal coronary which he sustained on May 10, 1973, and stated unequivocally that there was a causal relationship between the stressful events concerned with the decedent's work and his death from myocardial infarction. (Notes of Testimony, 10/21/74, pages 16 and 17).

14. Claimant's decedent had suffered a prior heart attack in 1967 but had been able to return to work and engage in his normal activities without difficulty.

15. The testimony of Dr. Louis A. Soloff, a cardiology specialist, was reviewed by the Referee, and found not persuasive because he does not believe that unusual mental stress could have the same effect on the claimant's already diseased heart as would unusual physical stress. Further, Dr. Soloff countered the expert opinion of Dr. Kraft, who was the treating cardiologist for the Claimant, and whose opinion is therefore entitled to greater weight.

16. The testimony of numerous witnesses brought by the Defendant and heard on January 27, 1975, and April 11, 1975, was likewise reviewed and same was found not to be persuasive as to a lack of stress on the part of Claimant's decedent, especially because they were not familiar with the extent of the work performed by Claimant's decedent at his home during evening hours, and particularly during several hours on the evening immediately preceding his death.

17. Claimant's funeral bill from Anton B. Urban, Funeral Director, is found to be \$445.00.

Conclusions of Law

1. Claimant's decedent was employed by the Defendant, Philadelphia Electric Co., on and before May 10, 1973, earning average weekly wages of \$473.00.

2. On May 10, 1973, Claimant's decedent suffered a compensable injury within the meaning of the Act when he sustained a fatal coronary attack at his home after an extended period of additional and unusual strain and exertion, including five hours at home immediately prior to his coronary attack, in carrying on for his employer his duties in a special project at work and in the preparation of the material for a treatise he was to deliver at a meeting to be held in California a few days after his coronary attack.

3. Claimant's decedent had suffered a prior heart attack in 1967, but had made a full recovery and was able to return to his normal duties with the defendant without difficulty, although he was still under treatment by his physician for his prior attack.

4. Claimant's decedent's prior condition was aggravated by the unusual strain and exertion of his special duties in Project "PMS4" and the additional burden of preparing for the delivery of a treatise on behalf of his employer at a California meeting, and the unusual activities at work and at his home in the evenings precipitated his fatal coronary attack on May 10, 1973, and therefore constituted a compensable injury arising from and related to his occupation. See Workmen's Compensation Appeal Board and Sculliacioti vs. Bernard S. Pincus Co., 357 A.2d 707 (1976); W.C.A.B. vs. Ayres Phila., Inc., 351 A.2d 306 (1976); and W.C.A.B. vs. Kannell Jewelers, Inc., 347 A.2d 500 (1975).

5. The treating physician and cardiologist for Claimant's decedent established by unequivocal and substantial competent evidence that there was a direct causal relationship between the unusual stress, strain and exertion of his employment and the fatal coronary attack suffered by Claimant's decedent on May 10, 1973. See Workmen's Compensation Appeal Board, et. al. vs. Bowen, 364 A.2d 1387 (1976).

6. Claimant established that she was the legal widow of the decedent, and was residing with him in a common household at the time of his death, and was dependent upon him for her support.

7. Claimant is therefore entitled to death benefits under the Workmen's Compensation Act, commencing on May 10, 1973, and continuing thereafter under the provisions of the said Act.

8. Claimant's decedent was buried by Anton B. Urban, Funeral Director, at the cost of \$473.00, and Claimant paid the said funeral bill and is entitled to reimbursement therefor.

Order and Award

Compensation is awarded. The Defendant is hereby Ordered and Directed to pay Claimant death compensation benefits for the work-related death of her husband, at the rate of \$100.00 a week, commencing May 10, 1973, and continuing thereafter under the provisions of the Workmen's Compensation Act, with legal interest thereon; and further to pay Claimant the sum of \$473.00 in reimbursement of the funeral expenses incurred by her for her husband's funeral. Counsel fee of 20% of the entire award is hereby approved for payment to Don F. D'Agui, Esq., for services rendered to the Claimant. The said counsel fee requested has been approved by the Claimant and is chargeable against the Claimant's Award.

Irvin Stander
Referee, Phila. District

Phila., Pa.
Dec. 27, 1976

IV.
THE OPINION OF THE SUPREME COURT ON
PENNSYLVANIA (LARSEN, J.) IN
KRAWCHUK V. PHILADELPHIA ELECTRIC CO.
439 A.2D 627, 632 (1981), CONCLUDED AS FOLLOWS

The referee found, after several days of hearing including testimony by the claimant and the victim's co-workers and supervisors, that the victim's normal work, the special project known as "PMS4" and the treatise he was to deliver in California, all constituted stress and exertion arising from and relating to his course of employment. Dr. Kraft, the treating cardiologist, gave his unequivocal medical opinion that the victim's heart attack was causally connected to the stress of his employment. These findings were amply supported by the record and amply support the referee's conclusion that "there was a direct causal relationship between the unusual stress, strain and exertion of his employment and the fatal coronary attack. . . ."

Consequently, as the Board and the Commonwealth Court committed an error of law, and as the referee Stander's findings of fact and conclusions of law were supported by substantial evidence, we reverse the order of the Commonwealth Court and reinstate the referee's award.