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# REVIEW OF AGREEMENTS AND AWARDS AND SETTING ASIDE OF FINAL RECEIPTS UNDER THE WORK- MEN'S COMPENSATION ACT

S. H. TORCHIA\*

The importance of Sections 413 and 434 of the Act of 1915, P.L. 736, and its amendments can be appreciated readily since all claims for compensation, or termination of compensation payments subsequent to an award or agreement must of necessity be considered under either Section. Each paragraph of Section 413 will be considered separately, discussing the grounds for relief, what constitutes sufficient grounds, and the limitations affecting such relief. Under Section 434 will be considered the grounds for relief as affecting final receipts and the limitations contained therein.

## GROUND FOR RELIEF UNDER SECTION 413

This Section consists of two parts to which we will refer as paragraph 1 and paragraph 2. Each paragraph relates to a distinct class of cases for the review, modification, etc., of compensation agreements or awards. Paragraph 1 relates only to agreements, while paragraph 2 relates to agreements and awards.

Paragraph 1, in substance holds that an original or supplemental agreement may be *reviewed, modified, or set aside* upon proof that such agreement was procured by *fraud, coercion, or other improper conduct* of a party, or was founded upon a *mistake of law or of fact*.

Paragraph 2 holds that an original or supplemental agreement or award may be *modified, reinstated, suspended, or terminated* upon proof that the disability of an injured employee has *increased, decreased, recurred, or has temporarily, or finally ceased*, or that the *status of any dependent has changed*.

The first paragraph, therefore, has absolutely nothing to do with the employee's physical condition since the agreement was made. It is concerned only with the agreement and the conduct of the parties with reference to that agreement. In other words, when the agreement was entered into, did the conduct of the parties, or lack of understanding constitute fraud, coercion, etc.

Conversely, paragraph 2 is not concerned with the conduct of the parties but relates solely to changes in the employee's physical condition after the

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agreement or award. To come within the protection of this paragraph, there must be proof of increase, decrease, recurrence or some change in claimant's disability.

#### WHAT CONSTITUTES SUFFICIENT GROUNDS FOR RELIEF UNDER PARAGRAPH 1

To entitle one to relief under this paragraph, there must be proof that the conduct or lack of knowledge of the parties which constitutes fraud, coercion, mistake, etc., existed at the time the agreement sought to be reopened was made. In other words, the fact or condition which would warrant redress must be simultaneous with the entering of the agreement. *Zavatskie v. P. & R. C. & I. Co.*, 103 Pa. Superior Ct. 598 (1932). Anticipating the discussion under Section 434, it is to be noted that the grounds for setting aside a final receipt under that Section are the same as the grounds for modification, reinstatement, etc. of agreements under this paragraph. One deals with agreements, while the other deals with final receipts. The rule that the conduct or lack of knowledge of the parties which constitutes fraud, coercion, mistake, etc., must exist at the time the agreement is entered into, therefore applies with equal force to Section 434; and must exist at the time the final receipt is signed. In considering the elements of mistake, improper conduct, and fraud, under this paragraph and under Section 434, the same proof is required under both and the conduct or lack of knowledge constituting grounds for relief must exist at the moment the agreement is entered into or the final receipt executed. *Reichner v. Blakiston*, 118 Pa. Superior Ct. 415 (1934) and *Williams v. Baptist Church*, 123 Pa. Superior Ct. 136 (1936).

**MISTAKE OF FACT OR LAW:**—Where at the time of signing the agreement both parties were under the impression that the injury consisted of a blow on the head, causing slight concussion of the brain, and it subsequently developed that the skull had been fractured, causing total disability, it would be such a mutual mistake as would entitle claimant to a review of the agreement or the setting aside of a final receipt. *McKissich v. Penn Brook Coal Co.*, 110 Pa. Superior Ct. 444 (1933). So too, there would be a mistake where claimant was paid compensation for an injury to the right side and it afterward developed that in the same accident an injury had been inflicted to the left hip, which had been overlooked by both claimant's and employer's doctor, which later resulted in total disability. *Yanasavage v. Lehigh Nav. Coal Co.*, 112 Pa. Superior Ct. 404 (1934). Where both claimant and defendant were under the impression that no compensation was due for partial disability because he had returned to his former employment receiving the same wages, although half of his foot was amputated, there existed such a mutual mistake of fact and law to justify a review. *Johnson v. Jeddo Highland Coal Co.*, 99 Pa. Superior Ct. 94 (1930).

However, if the condition of the claimant is due to a subsequent development from an injury which was thought to be healed, or to claimant's own belief that his disability had ceased, which was later disproved by the subsequent course of events, it is not such a mistake as contemplated by the Act. *Bucher v. Kapp Bros.*, 110 Pa. Superior Ct. 71 (1933). Where claimant has been paid for disfigurement and later petitions for a longer period and the disfigurement is precisely the same as it was when the agreement was signed there was no mistake under this paragraph. *Baluta v. Glen Alden Coal Co.* 109 Pa. Superior Ct., 66 (1933). In other words, if claimant at the time of signing the agreement received what he was entitled to, his agreement cannot be reviewed on grounds of mistake if his condition changes for the worse. In such case he must seek redress in due time under paragraph 2 of this Section. Nor is he entitled to a review, in the absence of fraud or improper conduct, if claimant knew his condition at the time he signed the agreement.

The question of mistake will be discussed at greater length under Section 434.

**IMPROPER CONDUCT:** — Where claimant in the same accident sustained the loss of his thumb and index finger and this was known to claimant and employer and claimant was induced to enter into an agreement for the loss of index finger only, after being told by employer's physician that at the end of 35 weeks they would see about the rest, thereby inducing claimant to sign the agreement, it is such improper conduct as to entitle claimant to review under paragraph 1. *Kitchen v. Miller Bros.*, 115 Pa. Superior Ct. 141 (1934). So too, where claimant is paid total disability payments for a short period and it is then definitely determined that he lost the use of an arm and the employer knowing this threatened to withhold payments unless claimant signed an agreement for a low percentage of partial disability and after giving him light work for three weeks discharged him, this constitutes improper conduct. *Kessler v. North Side Packing Co.*, 122 Pa. Superior Ct. 565 (1936).

**FRAUD:**—Where claimant enters into an agreement for the loss of a thumb, and the employer knew at the time that claimant was suffering from a fixed, permanent disability to the hand and forearm, as well as the loss of a thumb, and the employer deliberately prepared an agreement restricting compensation to the loss of the thumb, this would be a fraud on the employee unless he was fully informed of all the circumstances and signed the agreement with full knowledge that he was thereby depriving himself of his legal rights, and he could therefore have his agreement reviewed under this paragraph. If its omission was due to a mutual mistaken belief that it was not permanent but temporary and would clear up within the period of compensation fixed in the

agreement, the review could be based on theory of mistake. *Tinsman v. Jones & Laughlin S. Corp.*, 118 Pa. Superior Ct. 516 (1935). Note that the condition complained of existed at the time the agreement was executed.

#### LIMITATION ON FILING A PETITION UNDER PARAGRAPH 1

The limitations provided by the amendments to Paragraph 2 do not apply to Paragraph 1. *Johnson v. Jeddo Highland*, 99 Pa. Superior Ct. 94 (1930). Paragraph 1 provides that upon certain proof an agreement may be reviewed, modified, or set aside "at any time". In order to understand the interpretation given by our Courts to the phrase "at any time" we must consider Section 306 of the Act. Section 306 (a) sets forth that the maximum time a claimant must be paid for total disability shall be 500 weeks, while 306 (b) sets 300 weeks as the maximum for partial disability. The "at any time" therefore means that if claimant is being paid for total disability he can file his petition any time within 500 weeks, and if he is being paid for partial disability any time within 300 weeks. However, this paragraph applies only to "existing agreements". Where an agreement has been terminated by final receipts or by order of Referee or is superseded by an award, it no longer exists and paragraph 1 does not apply. *Zupicich v. P. & R. C. & I. Co.*, 108 Pa. Superior Ct. 165 (1933). The *Zupicich* case has been modified by the case of *Kitchen v. Miller Bros.*, *supra*, which holds that "existing agreements" applies only to agreements under Section 306 (a) and (b) and not to agreements for a specific loss under Section 306 (c).

The reason for the ruling in the *Kitchen* case can best be shown by example. A has lost the use of his arm, and because of the fraud of his employer entered into an agreement for the loss of his fourth finger. After receiving the last payment on the agreement he filed a petition to review based on fraud. If it were not for the ruling in the *Kitchen case* A would be without redress because, there being no final receipt, Section 434 would not apply, not having filed within the life of the agreement, paragraph 2, Section 413 would not apply, and the agreement having ceased to exist because of final payment, paragraph 1, Section 413 would not apply. However, under the *Kitchen case*, claimant can petition for review under paragraph 1, within the time that he would be entitled to compensation were it not for the fraud, in the example above given, within 215 weeks for the loss of his arm and not within 15 weeks for the loss of fourth finger.

Where the employer deliberately prepared an agreement for loss of thumb, knowing at the time that claimant was also suffering from a fixed, permanent disability to the hand and forearm, claimant is entitled to review on grounds of fraud under paragraph 1 even though he did not file his petition until about four

months after the last payment of compensation and expiration of the agreement. *Tinsman v. Jones & Laughlin, supra.*

The theory upon which such review is allowed is based on the ruling in the *Kitchen* case. The *Tinsman* case therefore further explains the *Kitchen* case by allowing review not only where claimant is entitled to additional compensation under Section 306 (c) alone, but also where claimant is paid under 306 (c) and is entitled to compensation for permanent partial under Section 306 (b). This decision however, is limited, as in the *Kitchen* case, to a condition that existed at the time the agreement was entered into, and does not apply to subsequent developments.

While the opinion in the *Tinsman* case is silent as to the limitation period in which claimant would have to file for review (claimant having filed in less than four months from date of last payment) it seems that since claimant's relief would be under paragraph 1, and since his disability is partial, the limitation period would be 300 weeks. The *Tinsman* case followed to its logical conclusion would also cover a situation where claimant was known to have a fixed permanent total disability at the time of entering into an agreement for a specific loss and the limitation in such case would be 500 weeks under paragraph 1.

The mere fact that the employer is not making payments under the agreement does not render it terminated and until the employer files a petition to terminate, the agreement is open and action can be had under paragraph 1. *Furman v. Standard P. Steel Co.*, 111 Pa. Superior Ct. 44 (1933).

#### WHAT CONSTITUTES SUFFICIENT GROUNDS FOR RELIEF UNDER PARAGRAPH 2

It will be recalled that this paragraph concerns itself only with the claimant's changed physical condition. If claimant's condition is the same as it was at the time of the agreement or award, this paragraph does not apply. To entitle one to relief under this paragraph there must be proof that the disability of the injured employee has increased, decreased, recurred, or has temporarily or finally ceased, or that the status of any dependent has changed. Upon such proof there can be a modification, reinstatement, suspension, or termination of an original or supplemental agreement or award. Unlike paragraph 1, which relates only to "existing agreements" this paragraph relates to agreements and awards whether existing or terminated either by final receipt or by order of Referee. If relief is granted under this paragraph, the final receipt if there be one automatically disappears from the case. *Bucher v. Kapp Bros.*, 110 Pa. Superior Ct. 71 (1933).

#### LIMITATIONS ON FILING OF PETITION UNDER PARAGRAPH 2

There are three classes of agreements or awards that are affected by the limitations contained in this paragraph: Agreements or awards for a definite

period under Section 306 (c); agreements or awards in cases of eye injuries; all other agreements or awards.

On agreements or awards for a definite period, a petition must be filed during the life of the agreement or award. *Ernst v. Sassaman*, 117 Pa. Superior Ct. 353 (1935). If claimant is being paid for the loss of a hand for 75 weeks, and subsequent to the agreement or award, there develops a disability in addition to the loss of the hand, he cannot recover for this additional disability unless he files his petition for review before the expiration of the 75 weeks. *De Joseph v. Std. S. Car Co.*, 99 Pa. Superior Ct. 497 (1930). And where claimant is paid for the loss of a foot for 150 weeks and later claims he is partially disabled, but does not file his petition until after the expiration of 150 weeks, he is not entitled to the further payment of compensation. *Mc Garvey v. Conemaugh Furn. Co.*, 114 Pa. Superior Ct. 368 (1934).

However, where claimant was paid for a specific loss under Section 306 (c) and sustained disability separate, apart and distinct from the specific loss, and the testimony disclosed that prior to the expiration of this period, the employer and the insurer were aware of claimant's injuries and intended, with the knowledge of the employee, to protect his rights to have his claim for further compensation adjudicated, and before the last day for filing his claim, claimant had communicated with an attorney for the Compensation Board, to whom he had been referred by the Chairman of the Board, and had been advised that everything was to be taken care of for him, such conduct of the defendants, during the running of the period of limitation, constitutes such a quasi-estoppel as to prevent them from now setting up the bar of the limitations. *Horton v. W. Penn Power Co.*, 119 Pa. Superior Ct. 465 (1935).

Where claimant is being paid under an agreement for loss of leg, and his payments are commuted, his right to file a petition is governed by the number of weeks called for in the agreement and not by the last payment on commutation. *Davis v. Asquini*, 114 Pa. Superior Ct. 60 (1934).

Where claimant is awarded compensation for a loss under Section 306 (c) and appeals to the Board and the Board does not render a decision until after the expiration of the agreement, the limitation contained in paragraph 2 on agreements for a definite period does not apply, and claimant although he does not appeal from the Board's decision may file a review petition under paragraph 2. *Higgins v. Com. C. & C. Co.*, 106 Pa. Superior Ct. 1 (1932).

The limitation for the review of an agreement or award for an eye injury has not been changed by the Amendment to this paragraph, and therefore is the same as it was before the Amendment, to wit: 500 weeks if the disability be total and 300 weeks if partial. So where claimant has been paid compensation for partial disability for an eye injury, his position for review is proper if filed within 300 weeks following the seventh day after the accident, under paragraph 2 and

the final receipt automatically disappears. *Irwin v. Byllesby Eng. & Man. Corp.*, 119 Pa. Superior Ct. 449 (1935), and where he has been paid for total disability he must file within 500 weeks. *Zupicich case, supra*.

The exception in the case of eye injuries is limited to disability resulting directly from the eye injury, and not to a disability which is separate, apart and distinct from the loss of an eye. For example, suppose that claimant is paid for the loss of an eye and signs a final receipt and the testimony discloses that claimant had a latent condition of dementia praecox which was aggravated by the accident later causing total disability, and neither claimant nor defendant knew that it existed at the time of signing of final receipt, claimant's redress is not under exception to eye injuries under this paragraph, but rather under Section 434 to set aside final receipt on grounds of mutual mistake. The claimant having received all compensation due for the loss of his eye, and the subsequent disability being separate, apart and distinct from the eye injury, i.e., an injury to the brain, the exception can no longer apply. *Gardner v. Pressed Steel Car Co.*, 122 Superior Ct. 592 (1936).

On all other agreements or awards the petition must be filed within one year after the date of the last payment of compensation. *Yonasavage v. Lehigh Nav. Coal Co.*, 112 Pa. Superior Ct. 479 (1934). Where claimant suffers a "recurrence" of disability his only remedy is under paragraph 2, and if he does not file his petition within one year from the date of last payment of compensation he cannot recover. A "recurrence" negatives the existence of a mistake since it is a condition which must of necessity occur after the signing of a final receipt. *Bucher v. Kapp Bros.*, 110 Pa. Superior Ct. 249 (1932). Where claimant developed an asthmatic condition due to his injury which condition could not have developed at the time of the injury but at a later date, his only remedy is under paragraph 2, if his petition is filed within one year. *Bradley v. Pioneer Oil Co.*, 109 Pa. Superior Ct. 585 (1933). In other words, if claimant's present disability is due to changes in his physical condition which occurred after the signing of the final receipt, either by way of increase or recurrence, he is barred from receiving further compensation unless he files his petition for review within one year from the date of last payment. *Zavatskie v. P. & R. C. & I. Co.*, 103 Pa. Superior Ct. 598 (1931). If the petition is filed within a year, the final receipt automatically disappears upon proof of increase or recurrence of disability. It is not necessary to prove that the receipt was signed through fraud, coercion or mistake. *Irwin v. Byllesby Eng. & Man. Corp.*, 119 Pa. Superior Ct. 449 (1935).

With regard to the limitations added to paragraph 2 by the Amendment of April 13, 1927, the question has arisen whether the limitations apply to accidents occurring prior to the Amendment. In other words, is this Amendment retroactive? The Courts have held that the Amendment relates to procedure and applies to *pending* cases and is not confined to accidents which occur after its

passage and approval. *De Joseph v. Standard Steel Car Co.*, 99 Pa. Superior Ct., 497 (1930), and *Marchuk v. Pgh. Ter. Coal Corp.*, 106 Pa. Superior Ct. 249 (1932).

#### SECTION 434 AND WHAT CONSTITUTES GROUNDS FOR RELIEF THEREUNDER

This section relates only to cases where a final receipt is involved. In substance this Section holds that a final receipt may be set aside upon proof that it was procured by fraud, coercion, or other improper conduct of a party or is founded upon mistake of law or of fact. Such grounds must exist at the time the final receipt was signed. *Busi v. A. & S. Wilson Co.*, 110 Pa. Superior Ct. 95 (1933). What constitutes such grounds which would entitle claimant to relief is sometimes difficult to determine. The courts have rendered many decisions on this phase of the Compensation Law, and particularly on what constitutes a mistake of fact. A close examination of these cases will enable one to determine just what conduct or lack of knowledge of the parties constitutes fraud, coercion, mistake, etc., which would justify the setting aside of a final receipt, which is prima facie evidence of the termination of the employer's liability. *Savidge v. Dime T. & S. Co.*, 108 Pa. Superior Ct. 333 (1933).

**MISTAKE OF FACT OR OF LAW:** — If both parties were under the impression that the injury consisted of a blow on the head, causing slight concussion of the brain, and it subsequently developed that the skull was fractured, causing total disability over a year after the final receipt was signed, this would justify setting aside of the final receipt on grounds of mutual mistake. *Mc Kissich v. Penn Brook Coal Co.*, 110 Pa. Superior Ct. 444 (1933). The same mistake is found where compensation was allowed for an injury to the right side and afterwards it developed that in the same accident an injury had been inflicted to the left hip, which had been overlooked by both claimant's doctor and the employer's doctor, which later resulted in total disability. *Yanasavage v. Lehigh Navigation Coal Co.*, 112 Pa. Superior Ct. 404 (1934). Where both claimant and defendant were under the impression that claimant was not entitled to compensation for partial disability because he had returned to his former employment, receiving the same wages, although half of his foot was amputated, it was such a mutual mistake of fact and law as to set aside final receipt. *Johnson v. Jeddo Highland Coal Co.*, 99 Pa. Superior Ct. 94 (1930). Where compensation was fixed on the basis of one-day-a-week employment instead of five-and-a-half, it was held, following the decision in *Romig v. Champion Blower & Forge Co.*, 315 Pa. 97 (1934), that that was a mistake of law existing at the time the receipt was signed as the claimant was actually entitled to more compensation than he was awarded. *Repper v. Eichellergor & Co.*, 120 Pa. Superior Ct. 19 (1935). Where claimant is paid for the loss of an eye and signs a final receipt, his receipt will be set aside under Section 434 where both claimant and defendant were mistaken as to

the extent of disability caused by the eye injury. *Gardner v. Pressed Steel Car Co.*, 122 Pa. Superior Ct. 592 (1936).

In *Charles Borneman v. H. C. Frick Coke Co.*, 122 Superior Ct. 391 (1936), in referring to the case of *Shotina v. Pittsburgh Terminal Coal Corp.*, 114 Pa. Superior Ct. 108 (1934), regarding the "mistake" contemplated by this section, said: "The 'mistake of fact' contemplated by the act refers to a fact which existed at the time the final receipt was signed . . . Not to a subsequent development from an injury which was thought to be healed, or to claimant's own belief that his disability had ceased, which was later disproved by the subsequent course of events; and in the *Zavatski* case (103 Superior 598) that 'mistake of fact' if referable to the physical condition of the claimant, must not be one relating to changes which have occurred in his physical condition since the agreement (or award) was made; that present disability as a consequence of developments growing out of the injury, or physical degeneration resulting from it, is within the limitations prescribed and must be presented as a cause for reviewing the agreement (or award) within a year after the last payment of compensation. This was the purpose of the Amendment. If not applied to disability resulting from changes or developments in the claimant's physical condition, due to the injury, but arising, recurring, or increasing after the termination of the agreement (or award), the limitation would have little or no effect, for in practically every case the claimant could set up an alleged mistake of fact of that character, and the remedy sought to be applied by the Legislature in prescribing a limitation would be nullified. - - -"

In the *Shotina* case, *supra*, the Court further said: "That does not mean that if, without fraud or coercion on the part of his employer or his representative, an employee signs a final receipt believing he has recovered from his disability, and it subsequently develops, but more than a year thereafter that his disability recurs, there is such a mistake of law or fact as entitles him to set aside a final receipt and reinstate the compensation agreement. Such a case comes squarely within the second paragraph of Section 413 as Amended by the Acts of 1919 and 1927 and action is barred if the petition is filed more than a year after the final receipt was signed. *Bucher v. Kapp Bros.*, 110 Pa. Superior Ct. 65 (1933)."

So where claimant developed an asthmatic condition due to injury which condition could not have developed at time of injury but at a later date it was held that there was no mistake such as to set aside a final receipt. Not having filed within one year under paragraph 2 Section 413, claimant is barred. *Bradley v. Pioneer Oil Co.*, 109 Pa. Superior Ct. 585 (1933). Where claimant knew he was partially disabled at the time of signing the final receipts, he cannot have the final receipts set aside on grounds of mistake. *Palino v. Hazle Brook Coal Co.*, 112 Pa. Superior Ct. 15 (1934).

Where claimant signed final receipts on March 20, 1931 and did not file his petition for review until June 21, 1932, and the evidence discloses that he suffered a recurrence of disability in the form of Myocarditis due to infection of his in-

jured leg, and it was not until September 1931 that he had beginning signs of Myocarditis, although he could have his compensation reinstated if he filed his petition within a year from the date of last payment, there was no such mistake of fact as would justify setting aside the final receipt. "A mere mistaken belief upon the part of an employee, and his employer at the time an agreement is terminated by a final receipt that the employee may return to work without danger of any recurrence of disability is not the kind of a mistake of fact contemplated by Section 434." *Reichner v. Blakiston's Sons & Co.*, 115 Pa. Superior Ct. 415 (1934). Where claimant testifies that the condition of his hand is the same as it was at the time he signed the final receipt, there is no mistake as to justify setting it aside. *Tubbs v. O. T. Oil Co.*, 114 Pa. Superior Ct. 375 (1934). Where paralysis develops several months after the signing of a final receipt, it cannot be set aside on grounds of mistake. *Godfroid v. Rockhill C. & I Co.*, 111 Pa. Superior Ct. 296 (1933). Where claimant develops a tubercular condition following the accident and after signing the final receipt he cannot have the receipt set aside under Section 434 on grounds of mistake even though "he did not know he was not going to be able to continue work" and that the pain in his back returned from time to time. This is a development since the agreement was terminated and does not constitute a mistake. *Busi v. Wilson Co.*, 110 Pa. Superior Ct. 95 (1933).

The burden of proof is on claimant to establish his right to have a final agreement set aside by evidence reasonably satisfactory that a mistake in fact had been made. The evidence must be more than a scintilla. *Shuler v. Mid-Valley Coal Co.*, 296 Pa. 507 (1929).

**IMPROPER CONDUCT:** — Where the defendant knew from the reports of its own doctors that claimant was not able to return to his regular work when they paid him the compensation which had been improperly withheld for nearly two months, and took the final receipt without explaining to claimant that this was to be the final payment on the agreement, but was told that before he could get his money, he would have to sign for it, this is improper conduct on the part of employer such as would justify setting aside final receipt under Section 434 even though claimant was aware that he could not work at the time. *Graham v. Hillman Coal & Coke Co.*, 122 Pa. Superior Ct. 579 (1936).

#### LIMITATIONS UNDER SECTION 434

This section also uses the words "at any time" when a petition to set aside a final receipt may be filed, and have received the same interpretation, i.e. within 500 weeks from the seventh day of disability if the disability be total and 300 if it be partial.

So where claimant signed a final receipt, and a mistake under Section 434 was conceded, and the Referee found that claimant is partially disabled, he can-

not have his compensation reinstated if the petition under this Section is not filed within 300 weeks. *McKissick v. Penn Brook Coal Co.*, 110 Pa. Superior Ct. 444 (1933). *Pete v. MacDonald Eng. Co.*, 117 Pa. Superior Ct. 605 (1935).

However, where compensation is not terminated by final receipt, but claimant is paid partial for 300 weeks and then within a year from last payment his disability becomes total, he has one year from date of last payment under paragraph 2, Section 413 to file his petition. *Meraglia v. Publicker Com. Al. Co.*, 113 Pa. Superior Ct. 487 (1934).

#### MISCELLANEOUS

**FILING OF PETITION:** — Where claimant files the wrong petition or makes reference to an inapplicable Section, it does not prejudice his rights, provided he adduces evidence showing that he is entitled to relief under any Section. *Busi v. A. & S. Wilson Co.*, 110 Pa. Superior Ct. 95 (1933).

**ON THE RIGHT OF THE REFEREE TO SUSPEND PAYMENTS UNDER PARAGRAPH 2 SECTION 413:** — Where the Referee finds that claimant suffers a partial disability he has no authority under Paragraph 2 Section 413 to suspend payments until claimant returns to work and establishes his earning power. He must determine as best he can from the evidence, the extent of his loss of earning power. *Fornatti v. Tower Hill Connellsville Coke Co.*, 77 Pa. Superior Ct. 122 (1921). Termination is granted upon proof that the disability of an injured employee has "finally ceased," a suspension is granted when it has "temporarily" ended. When an agreement has been "suspended" as contemplated by this Section, the employer is entirely free from liability to pay any compensation, unless there is a recurrence of disability within the period fixed for reinstatement. The finding of the Referee in this case was that claimant was partially disabled and therefore entitled to compensation at the time. If the Referee does grant a suspension when claimant is entitled to compensation for partial disability, said suspension is improper and of no effect and the agreement is still in existence and the one year limitation in Paragraph 2 does not apply, since there cannot have been a "last payment of compensation," within the meaning of this Section. *Stanella v. Scranton Coal Co.*, 122 Superior Ct. 506 (1936).

**AGREEMENTS "AS PER" AWARDS:** — Where the referee finds that claimant has sufficiently recovered to resume work and makes an award covering the period of disability, and no appeal is taken, and following this the parties enter into an agreement "as per" the award and claimant signs final receipts, the award and not the agreement and final receipt governs for purposes of review under paragraph 2 Section 413. *Borneman v. H. C. Frick Coke Co.*, 122 Pa. Superior Ct. 391 (1936).

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