

02-1168-CD  
JAMES E. DOHNER -vs- LAWRENCE TOWNSHIP et al

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES E. DOHNER,

Plaintiff

vs.

LAWRENCE TOWNSHIP and  
LAWRENCE TOWNSHIP BOARD  
OF SUPERVISORS,

Defendants

No. 02-1168-CO

Type of Case: Equity

Type of Pleading:  
Complaint

Filed on Behalf of:  
James E. Dohner, Plaintiff

Counsel of Record for this Party:  
F. Cortez Bell, III, Esquire  
I.D. #30183

Bell, Silberblatt & Wood  
318 East Locust Street  
P.O. Box 670  
Clearfield, PA 16830  
Telephone: (814)765-5537

**FILED**

JUL 26 2002

6/1.44/atty Bell  
William A. Shaw #3000  
Prothonotary  
See atty.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

JAMES E. DOHNER,

Plaintiff

vs.

LAWRENCE TOWNSHIP and  
LAWRENCE TOWNSHIP BOARD  
OF SUPERVISORS,

Defendants

No. 02-1168-CD

NOTICE TO DEFEND

TO: Lawrence Township  
c/o Lawrence Township Board  
of Supervisors  
George Street  
P.O. Box 508  
Clearfield, PA 16830

and

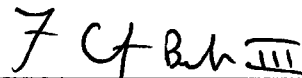
Lawrence Township Board of  
Supervisors  
George Street  
P.O. Box 508  
Clearfield, PA 16830

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT FIND ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURTHOUSE  
2nd & Market Streets  
Clearfield, Pennsylvania 16830  
Telephone (814) 765-2641 Ex. 5982

BELL, SILBERBLATT & WOOD  
BY



F. Cortez Bell, III, Esquire  
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

JAMES E. DOHNER,  
Plaintiff

vs.

LAWRENCE TOWNSHIP and  
LAWRENCE TOWNSHIP BOARD  
OF SUPERVISORS,  
Defendants

No. 62-1168-CD

COMPLAINT

NOW, comes the Defendant, James E. Dohner, by and through his attorney, F. Cortez Bell, III, Esquire, who respectfully sets forth his Complaint against the Defendants and in support thereof would respectfully request and aver as follows:

1. That the Plaintiff is James E. Dohner, an adult individual, who resides at 332 Turnpike Avenue, Clearfield, Clearfield County, Pennsylvania, 16830.

2. That the Defendant is Lawrence Township, a Second Class Township, organized and existing under the laws of the Commonwealth of Pennsylvania as a municipal corporation and having its situs and place of business located within Lawrence Township, Clearfield County, Pennsylvania. It would be further averred that the true and correct mailing address of Lawrence Township is P.O. Box 508, Clearfield, Pennsylvania, 16830.

3. That the Defendant, the Lawrence Township Board of Supervisors, is collectively the governing body of the Defendant, Lawrence Township, with the Lawrence Township Board of Supervisors having its situs and place of business located in Lawrence Township, Clearfield County, Pennsylvania. It would be further averred that the correct mailing address of the Defendant, Lawrence Township Board of Supervisors, is P.O. Box 508, Clearfield, Pennsylvania, 16830.

4. That it would be averred that all the acts and circumstances giving rise to the Plaintiff's Complaint against the Defendants arise as a result of conduct, events or occurrences all of which occurred within Clearfield County, Pennsylvania.

5. That from 1979 on a part-time basis and commencing in May, 1982 on a full-time basis through the present, the Plaintiff, James E. Dohner, has been employed by Lawrence Township and the Lawrence Township Board of Supervisors as a full-time police officer, with said employment having been continuous in nature during said period of time.

6. That on October 2, 2001, the Plaintiff suffered a heart attack and has not worked in his capacity as a full-time police officer since October 2, 2001 through the date of the filing of this Complaint.

7. That during calendar year 2001 the Plaintiff's rate of pay was the amount of \$16.30 per hour and commencing with calendar year 2002 the Plaintiff's rate of pay was the amount of \$16.80 per hour.

8. That the Plaintiff, although desirous of returning to work and intending to do the same upon completion of his rehabilitation and convalescence, has yet to be released by his treating physicians to return to work on a full-time basis.

9. That the Plaintiff avers that he has a cause of action and claim against the Defendant, Lawrence Township, and the Defendant, Lawrence Township Board of Supervisors, based upon the provisions of the Heart and Lung Act as set forth below:

**HEART AND LUNG ACT BENEFITS**

10. Paragraphs 1 through 9 of the Plaintiff's Complaint set forth above are incorporated herein by reference as if the same were set forth in full at length.

11. That on October 2, 2001, the Plaintiff suffered a heart attack which has prevented Plaintiff from continuing in his capacity as a full-time police officer for the Defendants from October 2, 2001 to the date of the filing of this Complaint.

12. That Plaintiff's treating physicians as of the date of the filing of this Complaint have not released him such that he might return to his position as a full-time police officer for the Defendants.

13. That it is believed and therefore averred that the Plaintiff, although desirous of returning to work, shall be unable to do so until such point in time as his treating physicians release him to return to work.

14. That Plaintiff would aver that he suffered said heart attack and remains at this point in time temporarily disabled from engaging in his employment as a result of job related stress, with such stress being the primary causative factor of said heart attack.

15. That the Plaintiff is entitled to the benefits under the Heart and Lung Act as it applies to police officers (53. P.S. §637) which requires payment of full salary and benefits during the time period of said disability or convalescence. Attached hereto and incorporated herein by reference as Exhibit A is a complete copy of said statutory section and the sub-paragraphs thereunder.

16. That to date, the Defendants have not paid the Plaintiff benefits under the Heart and Lung Act, to the contrary, the Defendants have credited Plaintiff's sick leave, personal days, vacation days and holidays for all payments made to date thereby causing an exhaustion of Plaintiff's accrued sick leave, personal days and vacation days to the detriment of the Plaintiff and in violation of the provisions of the Heart and Lung Act.

17. That in addition, the said Heart and Lung Act requires payment of all medical

expenses and/or hospital costs associated with regard to the condition from which the Plaintiff has suffered and as may be necessary during his period of disability and convalescence.

18. That the Plaintiff notified the Defendants by letter dated March 28, 2002 as to the applicability of the Heart and Lung Act to the Plaintiff's situation and the Plaintiff therein made a request for the benefits of the Heart and Lung Act. Attached hereto and incorporated herein by reference as Exhibit B is a complete copy of said letter. That Plaintiff received no response to said letter other than being advised and directed to continue to use his sick days, personal days, vacation days and holidays in order to receive his pay check.

19. That the Plaintiff by a letter dated June 20, 2002 was advised by the Defendants that as a result of the expiration of his sick, vacation, personal and holidays as of June 22, 2002, that his employment would terminate with the Defendants as of June 22, 2002. Attached hereto and incorporated herein by reference as Exhibit C is a complete copy of said letter.

20. That the Plaintiff would aver that the requirement by the Defendants that he use his accrued sick, vacation, personal and holidays in order to continue to receive his pay up through June 22, 2002 is in direct violations of the provisions of the Heart and Lung Act.

21. That the Plaintiff's termination by the letter dated June 20, 2002 is contrary to the termination provisions set forth within the Union Contract within Article Number VI-Seniority, Section 2 and does not satisfy any of specific provisions set forth therein.

22. That the Plaintiff's termination by the letter dated June 20, 2002 is contrary to the termination provisions set forth within the Union Contract within Article Number XIV-Suspension-Discharge, Section 1 and does not constitute just cause as set forth within that provision.

23. That the termination of the Plaintiff simply because according to Township

records that he has expended all available accrued sick days, personal days and vacation days was improper.

24. That the termination of the Plaintiff's employment with the Defendants is contrary to the provisions of the Heart and Lung Act.

25. That the termination of the Plaintiff's employment pursuant to the letter dated June 20, 2002 has caused the Plaintiff further work related stress not only in regard to the alleged termination but also in regard to the cancellation of all health benefits applicable to his now pre-existing condition as well as the cancellation of all health benefits associated with regard to the Plaintiff's wife and dependants.

26. That the failure of the Defendants to comply with the provisions of the Heart and Lung Act constitute conduct of a willful, malicious and vexatious nature subjecting the Defendants to a claim for damages as a result of the Plaintiff's continued pain and suffering associated in regard to said act.

27. That the actions of the Defendants in terminating the Plaintiff's employment and canceling all his health benefits constitute a willful, malicious and vexatious act subjecting the Defendants to punitive damages.

28. That the conduct of the Defendants in not providing to the Plaintiff timely payments and benefits under the Heart and Lung Act constitutes willful, malicious and vexatious conduct which has caused the Plaintiff to suffer additional work related stress.

29. That said conduct on the part of the Defendants in failing to provide the Plaintiff with benefits clearly allowed by Pennsylvania law is such that punitive damages are appropriate.

30. That the Plaintiff has not received a pay check from the Defendants with the



Plaintiff having been paid since the date of his heart attack as a result of the use of his sick leave, personal days, vacation days and holidays, with the last pay check having been received by the Plaintiff for a period up through and including June 22, 2002. Since that date no additional pay has been received.

31. That the Plaintiff will suffer immediate and irreparable harm if an injunction is not granted for the following reasons:

A. The Plaintiff by not receiving a regular pay check will be harmed in that obviously he can not meet the normal expenses and billings necessary in order to sustain his standard of living.

B. The Plaintiff as a result of the unlawful termination of his employment in violation of the Heart and Lung Act will be irreparably harmed if his health care benefits are not continued in that either he will not be covered for various ongoing medical procedures and/or should he prevail in his civil complaint and his health care benefits have been terminated, there may be difficulty in restoring the same based upon preexisting conditions.

C. That the cancellation of health care benefits at this point in time, during the course of Plaintiff's current treatment, will adversely impact upon the treatment options available to the Plaintiff and may ultimately affect his ability to return to work as contemplated under the provisions of the Heart and Lung Act.

32. That the Defendants are causing irreparable harm which if allowed to continue

can not be fully compensated with monetary damages.

33. That the Plaintiff has no adequate remedy at law to address the instant situation concerning lack of pay and cancellation of health care benefits as the same must be resolved immediately in order to assure the continuation of the Plaintiff's ability to make payment on current living expenses and debt as well as to assure continued health care treatment of the Plaintiff.

34. That the Defendants will not suffer any injury if the requested preliminary injunction is issued because the status quo between the parties will be restored and maintained during the pendency of the civil action. The dispute will ultimately be resolved in due course by the Court following which based upon the Court's determination the Plaintiff will either be restored to his former position with his pay and benefits intact or the Plaintiff will be terminated from his position in a proper fashion at which time a decision can be made as to the continuation of his health care benefits under the provisions of the COBRA Act.

35. That it is believed and therefore averred that the Plaintiff is likely to succeed on the merits of its claim as the Plaintiff is seeking the application of a State Statute which has been enacted to cover situations exactly similar to that being asserted by the Plaintiff.

WHEREFORE, the Plaintiff claims against the Defendants all benefits under the Heart and Lung Act, to wit, salary at full scale at the various pay grades from October 2, 2001 through the present, and until such time as he returns to duty as a full-time police officer together with any amount for all medical and hospital expenses as may be incurred by the Plaintiff during the time period of his disability and convalescence. Plaintiff further avers that the Defendants should continue to make payment on his health care benefits such that health care coverage will continue until the resolution of this matter before the Court. Plaintiff respectfully requests that your Honorable Court:

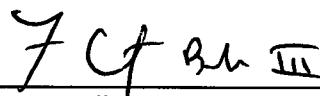
A. Issue a preliminary injunction Order granting the Plaintiff's request until hearing on the merits of the Plaintiff's claim can take place.

B. Issue a Rule to Show Cause why a preliminary injunction should not be granted against the Defendants Lawrence Township and Lawrence Township Board of Supervisors.

C. After hearing, issue a permanent injunction Order directing that the Defendants make full payment of the Plaintiff's salary and the Plaintiff's health care benefits until the matter is resolved on the merits of the Plaintiff's claim.

D. Such other relief as the Court deems equitable and/or appropriate.

BELL, SILBERBLATT & WOOD  
By

  
\_\_\_\_\_  
F. Cortez Bell, III, Esquire

318 East Locust Street  
P. O. Box 670  
Clearfield, PA 16830  
Telephone: (814) 765-5537  
I.D. #30183

VERIFICATION

I, F. CORTEZ BELL, III, ESQUIRE, verify that the statements made within the foregoing Complaint are true and correct to the best of my knowledge, information and belief based upon the facts supplied to me by the Plaintiff herein as well as the documents which have been attached as Exhibits. I further state that should the verification of the Plaintiff be required the same will immediately be filed.

This verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsifications to authorities.

Date: 7-26-02

F Ct Bell III  
F. Cortez Bell, III, Esquire

AW

## PUBLIC OFFICERS & EMPLOYEES

53 P.S. § 637

### Fees

Sum of \$15 to be paid police officers, under employment contract with city, and implementing ordinance, for each day or portion thereof spent in court appearances or hearings during off-duty hours was "fee" within this section. City of York v. Reihart, 379 A.2d 1328, 475 Pa. 151, Sup.1977.

### Off-duty services

City ordinance authorizing payment of \$15 to police officers for each day or portion thereof spent in court appearances or hearings during off-duty hours was in direct contravention of express and unambiguous language of legislature. City of York v. Reihart, 379 A.2d 1328, 475 Pa. 151, Sup.1977.

### 5. Vacation pay

A part-time policeman without a written employment contract whose employer had granted vacation pay after the policeman had worked a year is entitled to vacation pay in both the year when the employer announced a change in such benefit policy and in the succeeding year since vacation pay in any given year is compensation for the policeman's work in the immediately preceding year. Gay v. Lower Yoder Tp., 9 Pa. D. & C.3d 621 (1978).

### 6. Third class cities

This section is applicable to City of York, a third class city. City of York v. Reihart, 379 A.2d 1328, 475 Pa. 151, Sup. 1977.

**§ 637. State police, enforcement officers, investigators, parole agents, correction officers, psychiatric security aides, drug enforcement agents, policemen, firemen, park guards; injuries and diseases; compensation and expenses**

(a) Any member of the State Police Force, any enforcement officer or investigator employed by the Pennsylvania Liquor Control Board, and the parole agents, enforcement officers and investigators of the Pennsylvania Board of Probation and Parole, Capitol Police officers, correction officers employed by the Department of Corrections, whose principal duty is the care, custody and control of inmates, psychiatric security aides employed by the Department of Public Welfare and the Department of Corrections, whose principal duty is the care, custody, and control of the criminally insane, drug enforcement agents of the Office of Attorney General whose principal duty is the enforcement of the drug laws of the Commonwealth, special agents of the Office of Attorney General whose principal duty is the enforcement of the criminal laws of the Commonwealth, any member of the Delaware River Port Authority Police or any policeman, fireman or park guard of any county, city, borough, town or township, who is injured in the performance of his duties including, in the case of firemen, duty as special fire police, and by reason thereof is temporarily incapacitated from performing his duties, shall be paid by the Commonwealth of Pennsylvania if a member of the State Police Force or an enforcement officer or investigator employed by the Pennsylvania Liquor Control Board or the parole agents, enforcement officers and investigators of the Pennsylvania Board of Probation and Parole, Capitol Police officers, correction officers employed by the Department of Corrections, whose principal duty is the care,

custody and control of inmates, psychiatric security aides employed by the Department of Public Welfare and the Department of Corrections, whose principal duty is the care, custody, and control of the criminally insane, drug enforcement agents of the Office of Attorney General whose principal duty is the enforcement of the drug laws of the Commonwealth, special agents of the Office of Attorney General whose principal duty is the enforcement of the criminal laws of the Commonwealth, or by the Delaware River Port Authority if a member of the Delaware River Port Authority Police or by the county, township or municipality, by which he is employed, his full rate of salary, as fixed by ordinance or resolution, until the disability arising therefrom has ceased. All medical and hospital bills, incurred in connection with any such injury, shall be paid by the Commonwealth of Pennsylvania or by the Delaware River Port Authority or by such county, township or municipality. During the time salary for temporary incapacity shall be paid by the Commonwealth of Pennsylvania or by the Delaware River Port Authority or by the county, city, borough, town or township, any workmen's compensation, received or collected by any such employe for such period, shall be turned over to the Commonwealth of Pennsylvania or to the Delaware River Port Authority or to such county, city, borough, town or township, and paid into the treasury thereof, and if such payment shall not be so made by the employe the amount so due the Commonwealth of Pennsylvania, the Delaware River Port Authority or the county, city, borough, town or township shall be deducted from any salary then or thereafter becoming due and owing.

(b) In the case of the State Police Force, enforcement officers and investigators employed by the Pennsylvania Liquor Control Board and the parole agents, enforcement officers and investigators of the Pennsylvania Board of Probation and Parole, Capitol Police officers, correction officers employed by the Department of Corrections, whose principal duty is the care, custody and control of inmates, psychiatric security aides employed by the Department of Public Welfare and the Department of Corrections whose principal duty is the care, custody, and control of the criminally insane, drug enforcement agents of the Office of Attorney General whose principal duty is the enforcement of the drug laws of the Commonwealth, special agents of the Office of Attorney General whose principal duty is the enforcement of the criminal laws of the Commonwealth, members of the Delaware River Port Authority Police and salaried policemen and firemen who have served for four consecutive years or longer, diseases of the heart and tuberculosis of the respiratory system, contracted or incurred by any of them after four years of continuous service as such, and caused by extreme overexertion in times of stress or danger or by exposure to heat, smoke, fumes or gases, arising

directly out of the employ of the State Police Force, enforcement officers and investigators of the Pennsylvania Liquor Control Board and the parole agents, enforcement officers and investigators of the Pennsylvania Board of Probation and Parole, Capitol Police officers, correction officers employed by the Department of Corrections, whose principal duty is the care, custody and control of inmates, psychiatric security aides employed by the Department of Public Welfare and the Department of Corrections whose principal duty is the care, custody, and control of the criminally insane, drug enforcement agents of the Office of Attorney General whose principal duty is the enforcement of the drug laws of the Commonwealth, special agents of the Office of Attorney General whose principal duty is the enforcement of the criminal laws of the Commonwealth, members of the Delaware River Port Authority Police, or policeman or fireman, shall be compensated with the terms hereof; compensation shall be compensable under the compensation act of 1933, except in the case of accidental injury, such disability arising from occupational disease disabilities are compensable under the compensation laws of this Commonwealth. In the case of tuberculosis of the respiratory system, consecutive years of service shall be consecutive years of service as a result of employment.

(c) In the case of any act, the statutes of limitation and 434 of the act of June 19, 1933, "The Pennsylvania Workmen's Compensation Act" shall run until the expiration of the term of office.

(d) All payments herein provided for by the Commonwealth of Pennsylvania on the account of any State Police, and any payments required to be made on the account of any enforcement officer or investigator of the Pennsylvania Liquor Control Board, or any payment required to be made on the account of any parole agent, enforcement officer or investigator of the Pennsylvania Board of Probation and Parole, or any payment required to be made on the account of any correction officer employed by the Department of Corrections, shall be made from monies appropriated to the Pennsylvania Department of Corrections, and any payment required to be made on the account of any psychiatric

directly out of the employment of any such member of the State Police Force, enforcement officer, investigator employed by the Pennsylvania Liquor Control Board, guard or enforcement officer employed by the Department of Corrections or parole agent, enforcement officer or investigator of the Pennsylvania Board of Probation and Parole, Capitol Police officers, correction officers employed by the Department of Corrections whose principal duty is the care, custody and control of inmates, psychiatric security aides employed by the Department of Public Welfare and the Department of Corrections whose principal duty is the care, custody, and control of the criminally insane, drug enforcement agents of the Office of Attorney General whose principal duty is the enforcement of the drug laws of the Commonwealth, special agents of the Office of Attorney General whose principal duty is the enforcement of the criminal laws of the Commonwealth, member of the Delaware River Port Authority Police, or policeman or fireman, shall be compensable in accordance with the terms hereof; and unless any such disability shall be compensable under the compensation laws as having been caused by accidental injury, such disability shall be compensable as occupational disease disabilities are presently compensable under the compensation laws of this Commonwealth. It shall be presumed that tuberculosis of the respiratory system contracted or incurred after four consecutive years of service was contracted or incurred as a direct result of employment.

(c) In the case of any person receiving benefits pursuant to this act, the statutes of limitations set forth in sections 306.1, 315, 413, and 434 of the act of June 2, 1915 (P.L. 736, No. 338),<sup>1</sup> known as "The Pennsylvania Workmen's Compensation Act," shall not begin to run until the expiration of the receipt of benefits pursuant to this act.

(d) All payments herein required to be made by the Commonwealth of Pennsylvania on account of any member of the State Police Force shall be made from moneys appropriated to the Pennsylvania State Police, and any payments required to be made on account of any enforcement officer or investigator employed by the Pennsylvania Liquor Control Board shall be from appropriations out of the State Stores Fund, any payments required to be made on account of any parole agent, enforcement officer or investigator employed by the Pennsylvania Board of Probation and Parole shall be from moneys appropriated to the Pennsylvania Board of Probation and Parole, any payments required to be made on account of Capitol Police officers shall be made from moneys appropriated to the Department of General Services, any payments required to be made on account of any correction officer shall be made from moneys appropriated to the Department of Corrections, any payments required to be made on account of any psychiatric security aides shall be made from moneys

appropriated to the Department of Public Welfare or the Department of Corrections where appropriate, and any payments required to be made on account of any drug enforcement agent or special agents shall be made from moneys appropriated to the Office of Attorney General.

1935, June 28, P.L. 477, § 1. Amended 1937, May 14, P.L. 632, § 1; 1945, March 29, P.L. 100, § 1; 1949, May 11, P.L. 1081, § 1; 1951, May 16, P.L. 301, § 2; 1951, Sept. 27, P.L. 1473, § 2; 1955, July 7, P.L. 259, § 1; 1959, Dec. 15, P.L. 1750, No. 655, § 1; 1961, July 25, P.L. 867, § 1; 1970, March 5, No. 51, § 1; 1974, May 31, P.L. 309, No. 99, § 1, effective in 90 days; 1978, July 1, P.L. 687, No. 117, § 2, imd. effective; 1986, Dec. 19, P.L. 1733, No. 208, § 1, effective in 30 days; 1996, Dec. 19, P.L. 1438, No. 183, § 1, imd. effective.

177 P.S. §§ 516, 602, 774, 774.1, 774.2, 775, 1001.

#### DATE EFFECTIVE

*Section 2 of the act of 1961, which extended this section to the Delaware River Port Authority Police, provided: This act shall take effect upon the passage of substantially similar legislation by the State of New Jersey. See N.J.S.A. § 32:3A-1.*

#### Historical and Statutory Notes

The 1996 amendment inserted references to special agents of the Office of the Attorney General in subsecs. (a) and (b), and inserted a reference to special agents in subsec. (d).

#### Title of Act:

An Act providing for the payment of the salary, medical and hospital expenses of members of the State Police Force, of the enforcement officers and investigators employed by the Pennsylvania Liquor Control Board, and the parole agents, enforcement officers and investigators of the Pennsylvania Board of Probation and Parole, Capitol Police officers, correction officers employed by the Department of Corrections whose principal duty is the care, custody and control of inmates, psychiatric security aides employed by the Department of Public Welfare and the Department of Corrections whose principal duty is the care, custody, and control of the criminally insane, drug enforcement agents of the Office of Attorney

General whose principal duty is the enforcement of the drug laws of the Commonwealth, special agents of the Office of Attorney General whose principal duty is the enforcement of the criminal laws of the Commonwealth, members of the Delaware River Port Authority Police and of policemen, firemen and park guards by the Commonwealth of Pennsylvania, the Delaware River Port Authority, counties, cities, boroughs, towns and townships, who are injured or contract certain diseases in the performance of their duty; and providing that absence during such injury shall not reduce any usual sick leave period. 1935, June 28, P.L. 477, amended 1937, May 14, P.L. 632, § 1; 1945, March 29, P.L. 100, § 1; 1951, May 16, P.L. 301, § 1; 1951, Sept. 27, P.L. 1473, § 1; 1955, July 7, P.L. 259, § 1; 1959, Dec. 15, P.L. 1750, No. 655, § 1; 1961, July 25, P.L. 867, § 1; 1978, July 1, P.L. 687, No. 117; 1986, Dec. 19, P.L. 1733, No. 208; 1996, Dec. 19, P.L. 1438, No. 183.

#### Cross References

Death benefits, law enforcement officers killed in line of duty, see 53 P.S. §§ 891, 892.  
Occupational disease benefits, agreement or award, time for review, modification or reinstatement, see 77 P.S. § 1513.  
Workmen's compensation, notice of compensation payable, agreement, or award, time for review, modification or reinstatement, see 77 P.S. § 772.

## PUBLIC OFFICERS &

Pe

Work-related disability leave

Municipal Corporations  
200(5).  
WESTLAW Topic No. 268.  
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589, 614, 615.

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Validity 1

#### 1. Validity

This section providing for payment of compensation of policemen and during disability, together with expenses, involves no unlawful action and is not unconstitutional. Borough of Monaca, 3 Lawr. 134, 36 Mun. 17, affirmed 43 Pa. Super. 46; Iben v. Borough of Monaca, 3 Lawrence L.J. 204, 39, 1945, affirmed 43 A.2d Pa. Super. 46.



## 53 P.S. § 637

### Note 29

*v. Commonwealth of Pennsylvania, Pennsylvania State Police*, 499 A.2d 278. *Cunningham v. Com.*, Pennsylvania State Police, 507 A.2d 40, 510 Pa. 74, Sup.1986.

Burden is on plaintiff to show that the disease contracted arose directly out of exposure and not merely that it was contracted during the course of his employment as a fireman. *Ford v. City of Erie*, 39 Erie C.L.J. 189 (1956).

### 30. Sufficiency of evidence

Finding that state policeman was permanently disabled, for purposes of terminating benefits under Heart and Lung Act [53 P.S. § 637], was sufficiently supported by evidence that officer's disability, stemming from lower back injury, had persisted for 595 days prior to termination decision, lack of favorable prognosis and evidence of 40 to 50% permanent partial disability. *Cunningham v. Com.*, Pennsylvania State Police, 507 A.2d 40, 510 Pa. 74, Sup.1986.

Where the municipality admitted a workmen's compensation award, such admission did not constitute a res judicata award so as to permit judgment on the pleadings for the plaintiff under this section. *Ryan v. City of Erie*, 39 Erie C.L.J. 129 (1956).

### 31. Review

Commonwealth Court's scope of review on appeal from determination of state police that its employee's disability could not be considered "temporary," for purposes of the Heart and Lung Act is limited, but Court has an affirmative obligation to reverse an adjudication lacking substantial support on the record. *Palmeri v. Com.*, Pennsylvania State Police, 474 A.2d 1223, 82 Pa.Cmwlth. 348, Cmwlth.1984, affirmed 499 A.2d 278, 508 Pa. 544.

Where letter from state police removed former officer from status of disability leave and ordered him back to work, and the former officer, by force of such letter,

## § 638. Sick leave not affected

No absence from duty of any such policeman or fireman by reason of any such injury shall in any manner be included in any period of sick leave, allowed such policeman or fireman by law or by regulation of the police or fire department by which he is employed. 1935, June 28, P.L. 477, § 2.

## GENERAL MUNICIPAL LAW

no longer had status entitling him to full salary under "Heart and Lung Act" and its benefits after specified date, the letter announced determination affecting personal or property rights of the officer, and was "final adjudication" from which the former officer had 30 days to appeal. *Lamolinara v. Com.*, Pennsylvania State Police, 414 A.2d 1126, 51 Pa.Cmwlth. 570, Cmwlth.1980, affirmed 430 A.2d 1154, 494 Pa. 137.

Review of workmen's compensation appeal board's decision affirming referee's denial of insurer's petition to terminate payments to borough of workmen's compensation benefits for injured policeman was limited to determination of whether the findings of fact were consistent with each other and with conclusions of law and whether they could be sustained without a capricious disregard of competent evidence. *McIntosh v. Borough of Pleasant Hills*, 360 A.2d 273, 25 Pa. Cmwlth. 311, Cmwlth.1976.

In city fireman's action against city for disability benefits under Heart and Lung Act because of respiratory tuberculosis, where jury found plaintiff entitled to recover specified sum for temporary disability on basis of computation submitted by him, Supreme Court, on appeal from common pleas court's judgment for such sum, plus sum claimed for permanent disability, for which plaintiff was not entitled to compensation under Act, will not remand case to court below and direct another trial, but will direct entry of judgment for plaintiff in sum awarded as compensation for temporary disability only, without returning record to court below. *Creighan v. City of Pittsburgh*, 132 A.2d 867, 389 Pa. 569, Sup.1957.

Claimant should be permitted to appeal denial of benefits to administrative agency involved and to request administrative hearing in accordance with Administrative Agency Law, 71 P.S. § 1710 et seq. 1974 Op.Atty.Gen. No. 40.

## PUBLIC OFFICERS & EMPLOYEES

In general 2  
Actions 5  
Parole agents 4  
Purpose 3  
Validity 1

### 1. Validity

This section is constitutional though second class A cities are excepted. *Detweiler v. City of Allentown*, 171 Pa. 397, 1938.

### 2. In general

Members of the state police temporarily incapacitated by an injury sustained in the course of duty continue to accrue leave, annual leave and such other benefits as they would otherwise have been entitled to absent the injury. 1974 Op.Atty.Gen. No. 4.

Provisions of 71 P.S. § 82, do not prohibit member of Pennsylvania State Police from taking 15 days leave of absence during calendar year no matter how many days he has been absent from duty under provisions of § 637 of this title and this section. 1958 Op.Atty.Gen. No. 4.

## § 639. Policemen; borough expenses

(a) The minimum annual salary paid the full-time members of a borough or township by the borough or township shall be not less than two hundred dollars (\$200) of any borough, town or township having a population of more than five thousand two hundred persons or compensation shall be not less than two hundred dollars (\$200). The provisions of this section shall not apply to a policeman receiving an annual salary in excess of the minimum annual salary.

(b) Any borough, town or township gaining or otherwise, entering into a contract with police officers to pay and attorneys' fees incurred in any such action initiated against any such officer in the scope of his duties shall be liable for the same.

Law Offices  
**BELL, SILBERBLATT & WOOD**  
318 East Locust Street  
P.O. Box 670  
Clearfield, PA. 16830  
e-mail: bswlaw@pennswoods.net  
Writer's Direct e-mail: chipbell@pennswoods.net

RICHARD A. BELL  
ANN B. WOOD  
F. CORTEZ BELL, III

(814) 765-5537  
FAX (814) 765-9730

---

PAUL SILBERBLATT 1954-1985  
F. CORTEZ BELL, JR. 1954-1995 (Ret.)

OF COUNSEL  
DANIEL C. BELL

March 28, 2002

Re: Heart and Lung Benefits/James  
E. Dohner

Lawrence Township Board of Supervisors  
P.O. Box 508  
Clearfield, PA 16830

Dear Gentlemen:

I am writing this letter on behalf of James E. Dohner who has consulted me concerning the filing of a heart and lung claim in regard to his employment with the Lawrence Township Police Department. Officer Dohner has been unable to work for the Police Department since October 2, 2001 at which time he suffered a heart attack and a result of that has not been released by his treating physicians in order to resume his normal duties. Initially it was hoped that as a result of cardiac rehabilitation that he would be in a position to once again continue to serve on the Lawrence Township Police Department, however, further tests and occurrences now make it quite probable that he would not be in a position that his physicians would release him for return to his employment.

The Commonwealth of Pennsylvania has certain statutes which protect various classifications of employees who are disabled either as a direct result of their employment or in any fashion which can be derived from their employment. Those provisions are found within the Heart and Lung Act which is found at 53 P.S. §637 and §638. The Sections of the Heart and Lung Act carry within themselves specific provisions for diseases of the heart and tuberculosis of the respiratory system. Under the provisions of the Heart and Lung Act the disabled officer is to receive his full payment or salary during the time period of his disability and his sick leave can not be affected and if any sick leave has already been taken the same must be restored to the officer's account. Many municipalities, in light of the apparent cost of the Heart and Lung Act provisions, have

March 28, 2002

Re: James E. Dohner

Page 2

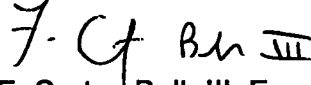
obtained insurance which protects them against any Heart and Lung claims. If you have any such insurance I believe the appropriate procedure would be simply to turn this letter over to the insurance carrier or agent and they can contact me directly.

It is my understanding that to this date Mr. Dohner has been using his sick days in order to assure that he continues to receive his regular pay from the Township. I would ask you to review his claim for benefits and please advise me as to the Township's status such that hopefully we might be able to resolve this matter in an amicable fashion. A copy of this letter is also being sent to the Township Solicitor such that the Solicitor's office will be aware of Mr. Dohner's claim and would be in a position to advise you accordingly. Should you have any questions whatsoever, please feel more than free to contact me.

Very truly yours,

BELL, SILBERBLATT & WOOD

By,

  
F. Cortez Bell, III, Esquire

FCBIII/day

Enclosures

cc: James A. Naddeo, Esquire, Solicitor

Rec'd 6-21-02  
**LAWRENCE TOWNSHIP BOARD OF SUPERVISORS**

**SUPERVISORS**

MELVIN L. SMITH  
WILLIAM D. LAWHEAD  
EDWARD E. BROWN

(814) 765-0176



P.O. BOX 508  
CLEARFIELD, PA. 16830

**SECRETARY-TREASURER**  
BARBARA SHAFFNER

(814) 765-4551  
FAX (814) 765-5258  
E-Mail ltbos@pennswoods.net

June 20, 2002

James E. Dohner  
332 Turnpike Avenue  
Clearfield, PA 16830

Dear Jim,

It has been brought to our attention that your sick, vacation, personal and holidays will be used up by June 22, 2002. As per the attached letter from State Workers, your claim for Heart & Lung was denied, therefore your employment with Lawrence Township will cease as of June 22, 2002. Because of your employment terminating in June your Select Blue Health Insurance thru Select Blue will be covered until July 31, 2002. At this time you may elect to pick up the Insurance coverage under COBRA.

Please let the Township Secretary know before July 10, 2002 of your intentions for health coverage. The following is a break down on your current coverage: (these prices are subject to change.)

Medical	\$1,013.31
Vision & Dental	53.00
<b>TOTAL</b>	<b>\$1,066.31</b>

**Single Coverage(Employee only)**

Medical	\$ 326.54
Vision	2.61
Dental	23.70
<b>TOTAL</b>	<b>\$ 352.85</b>

LTBOS/bss

Enclosures  
Cc;F. Cortez Bell III

Lawrence Township Board of Supervisors,

*William D. Lawhead*  
William D. Lawhead, Chairman

*Melvin L. Smith*  
Melvin L. Smith, Vice Chairman

*Edward E. Brown*  
Edward E. Brown, Supervisor

NOTICE OF WORKERS'  
COMPENSATION DENIAL

EMPLOYEE SOCIAL SECURITY NUMBER

269407509

DATE OF INJURY

10/02/2001

DATE OF NOTICE

04/22/2002

MONTH DAY YEAR

MONTH DAY YEAR  
PA BWC CLAIM NUMBER (IF KNOWN)

EMPLOYEE

First Name James  
Last Name Dohner  
Address 332 Turnpike Avenue  
Address  
City/Town Clearfield State PA Zip 16830  
County Clearfield  
Telephone 8147651437

EMPLOYER

Name Lawrence Twp Board of Supervisors  
Address P.O. Box 508  
Address  
City/Town Clearfield State PA Zip 16830  
County Clearfield  
Telephone 8147654551 FEIN

INSURER or THIRD PARTY ADMINISTRATOR (if self insured)

Name State Workers' Insurance Fund  
Address 607 Main Street  
Address Suite 300  
City/Town Johnstown State PA Zip 16830  
Telephone 8145332351 Bureau Code 001  
County Cambria  
Claim # 1417703-04 FEIN

NOTICE: A copy of this Notice of employer/insurer intent to deny the claimant's right to workers' compensation benefits must be sent to the employee or dependent not later than 21 days of employer's notice or knowledge of employee's disability or death. The original to be filed with the Bureau. Failure to comply may result in imposition of penalties.

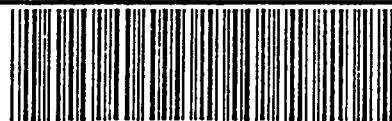
The employer/insurer declines to pay workers' compensation benefits to claimant because:

- x 1. The employee did not suffer a work-related injury. The definition of injury also includes aggravation of a pre-existing condition, or disease contracted as a result of employment.
2. The injury was not within the scope of employment.
3. The employee was not employed by the defendant.
4. Although an injury took place, the employee is not disabled as a result of this injury within the meaning of the Workers' Compensation Act.
5. The employee did not give notice of his/her injury or disease to the employer within 120 days within the meaning of Sections 311-313 of the Workers' Compensation Act.
6. Other good cause. Please explain fully in the space below. Failure to obtain medical confirmation of the injury will not be considered good cause to deny benefits if caused by dilatory conduct of insurance carrier or employer.

If it is alleged that physicians' reports were requested and not received, please give the date(s) they were requested. Attach a copy of request(s) for release(s). List dates:

Name of Claims Representative Devon S. Haselrig

Signature of Claims Representative



496 1197-1

Any individual filing misleading or incomplete information knowingly and with intent to defraud is in violation of Section 1102 of the Pennsylvania Workers' Compensation Act and may also be subject to criminal and civil penalties through Pennsylvania Act 165.

Phone Number

SEE OTHER SIDE FOR EMPLOYEE'S RIGHT TO FILE PETITION CONTESTING DENIAL

## EMPLOYEE'S RIGHTS TO CONTEST DENIAL OF WORKERS' COMPENSATION BENEFITS

You have the right to contest this denial of your claim for workers' compensation benefits. Your petition will be heard by a Workers' Compensation Judge. You and your employer will have the opportunity to testify and provide medical evidence with respect to your claim. Both you and your employer will have the right to bring witnesses. You may retain an attorney to represent you in this proceeding although representation by an attorney is not required by law. Because of the legal complications that can arise in occupational disease and workers' compensation cases, you may want to consider legal advice. If you do not know how to contact an attorney, please contact your local Bar Association Lawyer Referral Service.

The procedure for filing a petition is as follows :

1. At your request, a petition will be mailed to you. You and/or your attorney need to fill this out and return it to the Bureau with appropriate copies. One copy should be sent by you to your employer.
2. A petition for an injury must be filed within three years of the date of injury. For occupational disease claims, disability or death must occur within 300 weeks from last exposure. A petition must be filed no later than three years from that date. Failure to file a petition within these rules may result in loss of your claim.
3. You must give notice of your work-related injury or disease to your employer within 120 days of the date you knew (or should have known) that you were injured or had contracted a work-related disease.
4. When your petition is received by the Bureau of Workers' Compensation, it will be assigned to a Judge for hearing. You will be notified of your hearing date. All parties are requested to be fully prepared prior to the first hearing.

If you need petition forms or have questions, please contact the Bureau of Workers' Compensation :

TOLL FREE : 800-482-2383

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION  
No.

JAMES E. DOHNER,  
Plaintiff  
VS.

LAWRENCE TOWNSHIP and LAWRENCE  
TOWNSHIP BOARD OF SUPERVISORS,  
Defendants

COMPLAINT

BELL, SILBERBLATT & WOOD  
ATTORNEYS AT LAW  
318 EAST LOCUST STREET  
P. O. BOX 670  
CLEARFIELD, PA. 16830

CP

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES E. DOHNER,

Plaintiff

vs.

LAWRENCE TOWNSHIP and  
LAWRENCE TOWNSHIP BOARD  
OF SUPERVISORS,

Defendants

: No. 02-1168-CO

:  
: Type of Case: Equity

: Type of Pleading:  
: Motion for Injunctive Relief

:  
: Filed on Behalf of:  
: James E. Dohner, Plaintiff

:  
: Counsel of Record for this Party:  
: F. Cortez Bell, III, Esquire  
: I.D. #30183

:  
: Bell, Silberblatt & Wood  
: 318 East Locust Street  
: P.O. Box 670  
: Clearfield, PA 16830  
: Telephone: (814)765-5537

**FILED**

JUL 20 2002  
01:45/5cc atty Bell  
William A. Shaw  
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

JAMES E. DOHNER,  
Plaintiff

vs.

LAWRENCE TOWNSHIP and  
LAWRENCE TOWNSHIP BOARD  
OF SUPERVISORS,  
Defendants

No. 02-1168-CD

MOTION FOR INJUNCTIVE RELIEF

NOW COMES, F. Cortez Bell, III, Esquire, Attorney for the Plaintiff in the above captioned matter, who moves this Honorable Court to enter a Preliminary Injunction and/or a Permanent Injunction against the Defendants and those acting under them or on their behalf as more particularly set-forth in the Complaint filed in this matter which is incorporated hereby by reference.

Respectfully submitted,

BELL, SILBERBLATT & WOOD  
By,

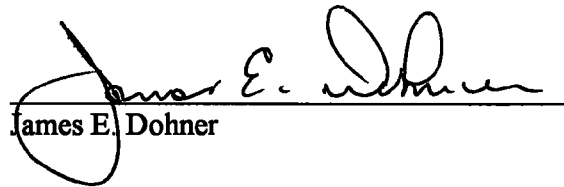
F. Cortez Bell, III  
F. Cortez Bell, III, Esquire  
Attorney for Plaintiff

Date: 7-20-02

**VERIFICATION**

I, James E. Dohner, verify that the statements made within the foregoing Petition for Preliminary Injunction are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsifications to authorities.

Date: 6-21-02

  
James E. Dohner

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION  
No.

JAMES E. DOHNER,  
Plaintiff

vs.

LAWRENCE TOWNSHIP and LAWRENCE  
TOWNSHIP BOARD OF SUPERVISORS,  
Defendants

MOTION FOR INJUNCTIVE RELIEF

BELL, SILBERBLATT & WOOD  
ATTORNEYS AT LAW  
318 EAST LOCUST STREET  
P. O. BOX 670  
CLEARFIELD, PA. 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES E. DOHNER,  
Plaintiff,

v.

LAWRENCE TOWNSHIP and  
LAWRENCE TOWNSHIP BOARD  
OF SUPERVISORS,  
Defendants.

\*  
\*  
\*  
\* No. 02-1168-CD  
\*  
\*

\*  
\*  
\* Type of Pleading:  
\*

\* Preliminary Objections  
\*

\* Filed on behalf of:  
\* Defendant  
\*

\* Counsel of Record for  
\* this party:  
\*

\* James A. Naddeo, Esq.  
\* Pa I.D. 06820  
\*

\* 211 1/2 E. Locust Street  
\* P.O. Box 552  
\* Clearfield, PA 16830  
\* (814) 765-1601

**FILED**

JUL 31 2002

0/343/1cc atty  
William A. Shaw  
Prothonotary

Naddeo

E  
KTB

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES E. DOHNER,	*
Plaintiff,	*
	*
v.	* No. 02-1168-CD
	*
LAWRENCE TOWNSHIP and	*
LAWRENCE TOWNSHIP BOARD	*
OF SUPERVISORS,	*
Defendants.	*

PRELIMINARY OBJECTIONS

Defendants, Lawrence Township and Lawrence Township Board of Supervisors, by and through their attorney, James A. Naddeo, hereby submits the following Preliminary Objection to Plaintiff's Complaint pursuant to Pa. R.C.P. 1028(a) and in support thereof avers the following:

DEMURRER

1. Plaintiff commenced this action by filing a Complaint in equity on July 20, 2002. A copy of the Complaint is attached hereto as Exhibit "A".

2. In the Complaint the Plaintiff alleges that he has a claim against the Defendant based upon the provisions of the Heart and Lung Act.

3. That the Heart and Lung Act applies only for persons who are temporarily incapacitated, and does not apply where disability is total or permanent.

4. That the Plaintiff in his Complaint alleges that his treating physicians have not released him to return to his position as a full-time police officer for the Defendants.

5. That the Plaintiff in his Complaint also pleads a letter directed by his counsel to the Lawrence Township Board of Supervisors wherein he states that "further tests and occurrences now make it quite probable that he would not be in a position that his physicians would release him for return to this employment".

WHEREFORE, Defendants respectfully request this Court to grant their preliminary objection by way of demurrer and dismiss all counts of Plaintiff's Complaint.

Preliminary Objections - Adequate Remedy at Law

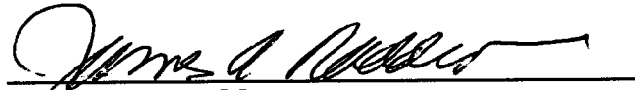
6. That Plaintiff's Complaint purports to state a cause of action based on an employment contract.

7. That the employment contract between the Plaintiff and Lawrence Township is governed by Teamsters Local Union No. 205 and provides for individuals seeking benefits under statute.

8. That equity does not lie where the Plaintiff has an adequate remedy at law.

WHEREFORE, Defendant respectfully requests this Court to grant their preliminary objection and dismiss all counts of

Plaintiff's Complaint.

A handwritten signature in black ink, appearing to read "James A. Naddeo", is written over a horizontal line.

James A. Naddeo  
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES E. DOHNER,

Plaintiff

vs.

LAWRENCE TOWNSHIP and  
LAWRENCE TOWNSHIP BOARD  
OF SUPERVISORS,

Defendants

No. 02-1168-CO

JUL 30 2002

Type of Case: Equity

Type of Pleading:  
Complaint

Filed on Behalf of:  
James E. Dohner, Plaintiff

Counsel of Record for this Party:  
F. Cortez Bell, III, Esquire  
I.D. #30183

Bell, Silberblatt & Wood  
318 East Locust Street  
P.O. Box 670  
Clearfield, PA 16830  
Telephone: (814)765-5537

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

JUL 20 2002

Attest.

  
Prothonotary/  
Clerk of Courts

EXHIBIT "A"



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

JAMES E. DOHNER,

Plaintiff

vs.

LAWRENCE TOWNSHIP and  
LAWRENCE TOWNSHIP BOARD  
OF SUPERVISORS,

Defendants

No.

NOTICE TO DEFEND

TO: Lawrence Township  
c/o Lawrence Township Board  
of Supervisors  
George Street  
P.O. Box 508  
Clearfield, PA 16830

and

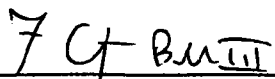
Lawrence Township Board of  
Supervisors  
George Street  
P.O. Box 508  
Clearfield, PA 16830

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT FIND ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURTHOUSE  
2nd & Market Streets  
Clearfield, Pennsylvania 16830  
Telephone (814) 765-2641 Ex. 5982

BELL, SILBERBLATT & WOOD  
BY

  
F. Cortez Bell, III, Esquire  
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

JAMES E. DOHNER,  
Plaintiff

vs.

No.

LAWRENCE TOWNSHIP and  
LAWRENCE TOWNSHIP BOARD  
OF SUPERVISORS,  
Defendants

COMPLAINT

NOW, comes the Defendant, James E. Dohner, by and through his attorney, F. Cortez Bell, III, Esquire, who respectfully sets forth his Complaint against the Defendants and in support thereof would respectfully request and aver as follows:

1. That the Plaintiff is James E. Dohner, an adult individual, who resides at 332 Turnpike Avenue, Clearfield, Clearfield County, Pennsylvania, 16830.

2. That the Defendant is Lawrence Township, a Second Class Township, organized and existing under the laws of the Commonwealth of Pennsylvania as a municipal corporation and having its situs and place of business located within Lawrence Township, Clearfield County, Pennsylvania. It would be further averred that the true and correct mailing address of Lawrence Township is P.O. Box 508, Clearfield, Pennsylvania, 16830.

3. That the Defendant, the Lawrence Township Board of Supervisors, is collectively the governing body of the Defendant, Lawrence Township, with the Lawrence Township Board of Supervisors having its situs and place of business located in Lawrence Township, Clearfield County, Pennsylvania. It would be further averred that the correct mailing address of the Defendant, Lawrence Township Board of Supervisors, is P.O. Box 508, Clearfield, Pennsylvania, 16830.

4. That it would be averred that all the acts and circumstances giving rise to the Plaintiff's Complaint against the Defendants arise as a result of conduct, events or occurrences all of which occurred within Clearfield County, Pennsylvania.

5. That from 1979 on a part-time basis and commencing in May, 1982 on a full-time basis through the present, the Plaintiff, James E. Dohner, has been employed by Lawrence Township and the Lawrence Township Board of Supervisors as a full-time police officer, with said employment having been continuous in nature during said period of time.

6. That on October 2, 2001, the Plaintiff suffered a heart attack and has not worked in his capacity as a full-time police officer since October 2, 2001 through the date of the filing of this Complaint.

7. That during calendar year 2001 the Plaintiff's rate of pay was the amount of \$16.30 per hour and commencing with calendar year 2002 the Plaintiff's rate of pay was the amount of \$16.80 per hour.

8. That the Plaintiff, although desirous of returning to work and intending to do the same upon completion of his rehabilitation and convalescence, has yet to be released by his treating physicians to return to work on a full-time basis.

9. That the Plaintiff avers that he has a cause of action and claim against the Defendant, Lawrence Township, and the Defendant, Lawrence Township Board of Supervisors, based upon the provisions of the Heart and Lung Act as set forth below:

**HEART AND LUNG ACT BENEFITS**

10. Paragraphs 1 through 9 of the Plaintiff's Complaint set forth above are incorporated herein by reference as if the same were set forth in full at length.

11. That on October 2, 2001, the Plaintiff suffered a heart attack which has prevented Plaintiff from continuing in his capacity as a full-time police officer for the Defendants from October 2, 2001 to the date of the filing of this Complaint.

12. That Plaintiff's treating physicians as of the date of the filing of this Complaint have not released him such that he might return to his position as a full-time police officer for the Defendants.

13. That it is believed and therefore averred that the Plaintiff, although desirous of returning to work, shall be unable to do so until such point in time as his treating physicians release him to return to work.

14. That Plaintiff would aver that he suffered said heart attack and remains at this point in time temporarily disabled from engaging in his employment as a result of job related stress, with such stress being the primary causative factor of said heart attack.

15. That the Plaintiff is entitled to the benefits under the Heart and Lung Act as it applies to police officers (53 P.S. §637) which requires payment of full salary and benefits during the time period of said disability or convalescence. Attached hereto and incorporated herein by reference as Exhibit A is a complete copy of said statutory section and the sub-paragraphs thereunder.

16. That to date, the Defendants have not paid the Plaintiff benefits under the Heart and Lung Act, to the contrary, the Defendants have credited Plaintiff's sick leave, personal days, vacation days and holidays for all payments made to date thereby causing an exhaustion of Plaintiff's accrued sick leave, personal days and vacation days to the detriment of the Plaintiff and in violation of the provisions of the Heart and Lung Act.

17. That in addition, the said Heart and Lung Act requires payment of all medical

expenses and/or hospital costs associated with regard to the condition from which the Plaintiff has suffered and as may be necessary during his period of disability and convalescence.

18. That the Plaintiff notified the Defendants by letter dated March 28, 2002 as to the applicability of the Heart and Lung Act to the Plaintiff's situation and the Plaintiff therein made a request for the benefits of the Heart and Lung Act. Attached hereto and incorporated herein by reference as Exhibit B is a complete copy of said letter. That Plaintiff received no response to said letter other than being advised and directed to continue to use his sick days, personal days, vacation days and holidays in order to receive his pay check.

19. That the Plaintiff by a letter dated June 20, 2002 was advised by the Defendants that as a result of the expiration of his sick, vacation, personal and holidays as of June 22, 2002, that his employment would terminate with the Defendants as of June 22, 2002. Attached hereto and incorporated herein by reference as Exhibit C is a complete copy of said letter.

20. That the Plaintiff would aver that the requirement by the Defendants that he use his accrued sick, vacation, personal and holidays in order to continue to receive his pay up through June 22, 2002 is in direct violations of the provisions of the Heart and Lung Act.

21. That the Plaintiff's termination by the letter dated June 20, 2002 is contrary to the termination provisions set forth within the Union Contract within Article Number VI-Seniority, Section 2 and does not satisfy any of specific provisions set forth therein.

22. That the Plaintiff's termination by the letter dated June 20, 2002 is contrary to the termination provisions set forth within the Union Contract within Article Number XIV-Suspension-Discharge, Section 1 and does not constitute just cause as set forth within that provision.

23. That the termination of the Plaintiff simply because according to Township

records that he has expended all available accrued sick days, personal days and vacation days was improper.

24. That the termination of the Plaintiff's employment with the Defendants is contrary to the provisions of the Heart and Lung Act.

25. That the termination of the Plaintiff's employment pursuant to the letter dated June 20, 2002 has caused the Plaintiff further work related stress not only in regard to the alleged termination but also in regard to the cancellation of all health benefits applicable to his now pre-existing condition as well as the cancellation of all health benefits associated with regard to the Plaintiff's wife and dependants.

26. That the failure of the Defendants to comply with the provisions of the Heart and Lung Act constitute conduct of a willful, malicious and vexatious nature subjecting the Defendants to a claim for damages as a result of the Plaintiff's continued pain and suffering associated in regard to said act.

27. That the actions of the Defendants in terminating the Plaintiff's employment and canceling all his health benefits constitute a willful, malicious and vexatious act subjecting the Defendants to punitive damages.

28. That the conduct of the Defendants in not providing to the Plaintiff timely payments and benefits under the Heart and Lung Act constitutes willful, malicious and vexatious conduct which has caused the Plaintiff to suffer additional work related stress.

29. That said conduct on the part of the Defendants in failing to provide the Plaintiff with benefits clearly allowed by Pennsylvania law is such that punitive damages are appropriate.

30. That the Plaintiff has not received a pay check from the Defendants with the

Plaintiff having been paid since the date of his heart attack as a result of the use of his sick leave, personal days, vacation days and holidays, with the last pay check having been received by the Plaintiff for a period up through and including June 22, 2002. Since that date no additional pay has been received.

31. That the Plaintiff will suffer immediate and irreparable harm if an injunction is not granted for the following reasons:

A. The Plaintiff by not receiving a regular pay check will be harmed in that obviously he can not meet the normal expenses and billings necessary in order to sustain his standard of living.

B. The Plaintiff as a result of the unlawful termination of his employment in violation of the Heart and Lung Act will be irreparably harmed if his health care benefits are not continued in that either he will not be covered for various ongoing medical procedures and/or should he prevail in his civil complaint and his health care benefits have been terminated, there may be difficulty in restoring the same based upon preexisting conditions.

C. That the cancellation of health care benefits at this point in time, during the course of Plaintiff's current treatment, will adversely impact upon the treatment options available to the Plaintiff and may ultimately affect his ability to return to work as contemplated under the provisions of the Heart and Lung Act.

32. That the Defendants are causing irreparable harm which if allowed to continue

can not be fully compensated with monetary damages.

33. That the Plaintiff has no adequate remedy at law to address the instant situation concerning lack of pay and cancellation of health care benefits as the same must be resolved immediately in order to assure the continuation of the Plaintiff's ability to make payment on current living expenses and debt as well as to assure continued health care treatment of the Plaintiff.

34. That the Defendants will not suffer any injury if the requested preliminary injunction is issued because the status quo between the parties will be restored and maintained during the pendency of the civil action. The dispute will ultimately be resolved in due course by the Court following which based upon the Court's determination the Plaintiff will either be restored to his former position with his pay and benefits intact or the Plaintiff will be terminated from his position in a proper fashion at which time a decision can be made as to the continuation of his health care benefits under the provisions of the COBRA Act.

35. That it is believed and therefore averred that the Plaintiff is likely to succeed on the merits of its claim as the Plaintiff is seeking the application of a State Statute which has been enacted to cover situations exactly similar to that being asserted by the Plaintiff.

WHEREFORE, the Plaintiff claims against the Defendants all benefits under the Heart and Lung Act, to wit, salary at full scale at the various pay grades from October 2, 2001 through the present, and until such time as he returns to duty as a full-time police officer together with any amount for all medical and hospital expenses as may be incurred by the Plaintiff during the time period of his disability and convalescence. Plaintiff further avers that the Defendants should continue to make payment on his health care benefits such that health care coverage will continue until the resolution of this matter before the Court. Plaintiff respectfully requests that your Honorable Court:



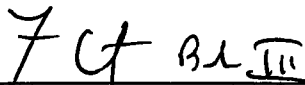
A. Issue a preliminary injunction Order granting the Plaintiff's request until hearing on the merits of the Plaintiff's claim can take place.

B. Issue a Rule to Show Cause why a preliminary injunction should not be granted against the Defendants Lawrence Township and Lawrence Township Board of Supervisors.

C. After hearing, issue a permanent injunction Order directing that the Defendants make full payment of the Plaintiff's salary and the Plaintiff's health care benefits until the matter is resolved on the merits of the Plaintiff's claim.

D. Such other relief as the Court deems equitable and/or appropriate.

BELL, SILBERBLATT & WOOD  
By

  
\_\_\_\_\_  
F. Cortez Bell, III, Esquire

318 East Locust Street  
P. O. Box 670  
Clearfield, PA 16830  
Telephone: (814) 765-5537  
I.D. #30183

VERIFICATION

I, F. CORTEZ BELL, III, ESQUIRE, verify that the statements made within the foregoing Complaint are true and correct to the best of my knowledge, information and belief based upon the facts supplied to me by the Plaintiff herein as well as the documents which have been attached as Exhibits. I further state that should the verification of the Plaintiff be required the same will immediately be filed.

This verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsifications to authorities.

Date: 7-26-02

F. Cortez Bell, III  
F. Cortez Bell, III, Esquire

**Fees**

Sum of \$15 to be paid police officers, under employment contract with city, and implementing ordinance, for each day or portion thereof spent in court appearances or hearings during off-duty hours was "fee" within this section. City of York v. Reihart, 379 A.2d 1328, 475 Pa. 151, Sup. 1977.

**Off-duty services**

City ordinance authorizing payment of \$15 to police officers for each day or portion thereof spent in court appearances or hearings during off-duty hours was in direct contravention of express and unambiguous language of legislature. City of York v. Reihart, 379 A.2d 1328, 475 Pa. 151, Sup. 1977.

**5. Vacation pay**

A part-time policeman without a written employment contract whose employer had granted vacation pay after the policeman had worked a year is entitled to vacation pay in both the year when the employer announced a change in such benefit policy and in the succeeding year since vacation pay in any given year is compensation for the policeman's work in the immediately preceding year. Gay v. Lower Yoder Tp., 9 Pa. D. & C.3d 621 (1978).

**6. Third class cities**

This section is applicable to City of York, a third class city. City of York v. Reihart, 379 A.2d 1328, 475 Pa. 151, Sup. 1977.

**§ 637.** State police, enforcement officers, investigators, parole agents, correction officers, psychiatric security aides, drug enforcement agents, policemen, firemen, park guards; injuries and diseases; compensation and expenses

(a) Any member of the State Police Force, any enforcement officer or investigator employed by the Pennsylvania Liquor Control Board, and the parole agents, enforcement officers and investigators of the Pennsylvania Board of Probation and Parole, Capitol Police officers, correction officers employed by the Department of Corrections, whose principal duty is the care, custody and control of inmates, psychiatric security aides employed by the Department of Public Welfare and the Department of Corrections, whose principal duty is the care, custody, and control of the criminally insane, drug enforcement agents of the Office of Attorney General whose principal duty is the enforcement of the drug laws of the Commonwealth, special agents of the Office of Attorney General whose principal duty is the enforcement of the criminal laws of the Commonwealth, any member of the Delaware River Port Authority Police or any policeman, fireman or park guard of any county, city, borough, town or township, who is injured in the performance of his duties including, in the case of firemen, duty as special fire police, and by reason thereof is temporarily incapacitated from performing his duties, shall be paid by the Commonwealth of Pennsylvania if a member of the State Police Force or an enforcement officer or investigator employed by the Pennsylvania Liquor Control Board or the parole agents, enforcement officers and investigators of the Pennsylvania Board of Probation and Parole, Capitol Police officers, correction officers employed by the Department of Corrections, whose principal duty is the care,

custody and control of inmates, psychiatric security aides employed by the Department of Public Welfare and the Department of Corrections, whose principal duty is the care, custody, and control of the criminally insane, drug enforcement agents of the Office of Attorney General whose principal duty is the enforcement of the drug laws of the Commonwealth, special agents of the Office of Attorney General whose principal duty is the enforcement of the criminal laws of the Commonwealth, or by the Delaware River Port Authority if a member of the Delaware River Port Authority Police or by the county, township or municipality, by which he is employed, his full rate of salary, as fixed by ordinance or resolution, until the disability arising therefrom has ceased. All medical and hospital bills, incurred in connection with any such injury, shall be paid by the Commonwealth of Pennsylvania or by the Delaware River Port Authority or by such county, township or municipality. During the time salary for temporary incapacity shall be paid by the Commonwealth of Pennsylvania or by the Delaware River Port Authority or by the county, city, borough, town or township, any workmen's compensation, received or collected by any such employe for such period, shall be turned over to the Commonwealth of Pennsylvania or to the Delaware River Port Authority or to such county, city, borough, town or township, and paid into the treasury thereof, and if such payment shall not be so made by the employe the amount so due the Commonwealth of Pennsylvania, the Delaware River Port Authority or the county, city, borough, town or township shall be deducted from any salary then or thereafter becoming due and owing.

(b) In the case of the State Police Force, enforcement officers and investigators employed by the Pennsylvania Liquor Control Board and the parole agents, enforcement officers and investigators of the Pennsylvania Board of Probation and Parole, Capitol Police officers, correction officers employed by the Department of Corrections, whose principal duty is the care, custody and control of inmates, psychiatric security aides employed by the Department of Public Welfare and the Department of Corrections whose principal duty is the care, custody, and control of the criminally insane, drug enforcement agents of the Office of Attorney General whose principal duty is the enforcement of the drug laws of the Commonwealth, special agents of the Office of Attorney General whose principal duty is the enforcement of the criminal laws of the Commonwealth, members of the Delaware River Port Authority Police and salaried policemen and firemen who have served for four consecutive years or longer, diseases of the heart and tuberculosis of the respiratory system, contracted or incurred by any of them after four years of continuous service as such, and caused by extreme overexertion in times of stress or danger or by exposure to heat, smoke, fumes or gases, arising

directly out of the employment of the State Police Force, enforcement officers of the Pennsylvania Liquor Control Board, parole agents, enforcement officers employed by the Department of Probation and Parole, Capitol Police officers, the Department of Corrections, whose principal duty is the care, custody and control of inmates, psychiatric security aides employed by the Department of Public Welfare and the Department of Corrections whose principal duty is the care, custody, and control of the criminally insane, drug enforcement agents of the Office of Attorney General whose principal duty is the enforcement of the drug laws of the Commonwealth, special agents of the Office of Attorney General whose principal duty is the enforcement of the criminal laws of the Commonwealth, members of the Delaware River Port Authority Police, or policeman or fireman, shall be compensable under the compensation laws of this Commonwealth in the event of an accidental injury, such disability or disease disabilities are the result of the performance of his duties in consequence of the consecutive years of service in the State Police Force, or in the result of employment.

(c) In the case of any act, the statutes of limitation and 434 of the act of June 19, 1937, "The Pennsylvania Workmen's Compensation Act" shall run until the expiration of

(d) All payments hereinafter provided for by the Commonwealth of Pennsylvania on account of any injury or disability shall be made from the State Police, and any payment on account of any injury or disability of any enforcement officer of the Pennsylvania Liquor Control Board shall be made from the State Stores Fund, any payment on account of any injury or disability of any parole agent, enforcement officer of the Pennsylvania Board of Probation and Parole shall be made from the appropriation to the Pennsylvania Department of Corrections, any payment required to be made on account of any injury or disability of any General Services, any payment on account of any injury or disability of any correction officer shall be made from the Department of Corrections, and any payment on account of any psychiatric

directly out of the employment of any such member of the State Police Force, enforcement officer, investigator employed by the Pennsylvania Liquor Control Board, guard or enforcement officer employed by the Department of Corrections or parole agent, enforcement officer or investigator of the Pennsylvania Board of Probation and Parole, Capitol Police officers, correction officers employed by the Department of Corrections whose principal duty is the care, custody and control of inmates, psychiatric security aides employed by the Department of Public Welfare and the Department of Corrections whose principal duty is the care, custody, and control of the criminally insane, drug enforcement agents of the Office of Attorney General whose principal duty is the enforcement of the drug laws of the Commonwealth, special agents of the Office of Attorney General whose principal duty is the enforcement of the criminal laws of the Commonwealth, member of the Delaware River Port Authority Police, or policeman or fireman, shall be compensable in accordance with the terms hereof; and unless any such disability shall be compensable under the compensation laws as having been caused by accidental injury, such disability shall be compensable as occupational disease disabilities are presently compensable under the compensation laws of this Commonwealth. It shall be presumed that tuberculosis of the respiratory system contracted or incurred after four consecutive years of service was contracted or incurred as a direct result of employment.

(c) In the case of any person receiving benefits pursuant to this act, the statutes of limitations set forth in sections 306.1, 315, 413, and 434 of the act of June 2, 1915 (P.L. 736, No. 338),<sup>1</sup> known as "The Pennsylvania Workmen's Compensation Act," shall not begin to run until the expiration of the receipt of benefits pursuant to this act.

(d) All payments herein required to be made by the Commonwealth of Pennsylvania on account of any member of the State Police Force shall be made from moneys appropriated to the Pennsylvania State Police, and any payments required to be made on account of any enforcement officer or investigator employed by the Pennsylvania Liquor Control Board shall be from appropriations out of the State Stores Fund, any payments required to be made on account of any parole agent, enforcement officer or investigator employed by the Pennsylvania Board of Probation and Parole shall be from moneys appropriated to the Pennsylvania Board of Probation and Parole, any payments required to be made on account of Capitol Police officers shall be made from moneys appropriated to the Department of General Services, any payments required to be made on account of any correction officer shall be made from moneys appropriated to the Department of Corrections, any payments required to be made on account of any psychiatric security aides shall be made from moneys

appropriated to the Department of Public Welfare or the Department of Corrections where appropriate, and any payments required to be made on account of any drug enforcement agent or special agents shall be made from moneys appropriated to the Office of Attorney General.

1935, June 28, P.L. 477, § 1. Amended 1937, May 14, P.L. 632, § 1; 1945, March 29, P.L. 100, § 1; 1949, May 11, P.L. 1081, § 1; 1951, May 16, P.L. 301, § 2; 1951, Sept. 27, P.L. 1473, § 2; 1955, July 7, P.L. 259, § 1; 1959, Dec. 15, P.L. 1750, No. 655, § 1; 1961, July 25, P.L. 867, § 1; 1970, March 5, No. 51, § 1; 1974, May 31, P.L. 309, No. 99, § 1, effective in 90 days; 1978, July 1, P.L. 687, No. 117, § 2, imd. effective; 1986, Dec. 19, P.L. 1733, No. 208, § 1, effective in 30 days; 1996, Dec. 19, P.L. 1438, No. 183, § 1, imd. effective.

1 77 P.S. §§ 516, 602, 774, 774.1, 774.2, 775, 1001.

#### DATE EFFECTIVE

*Section 2 of the act of 1961, which extended this section to the Delaware River Port Authority Police, provided: This act shall take effect upon the passage of substantially similar legislation by the State of New Jersey. See N.J.S.A. § 32:3A-1.*

#### Historical and Statutory Notes

The 1996 amendment inserted references to special agents of the Office of the Attorney General in subsecs. (a) and (b), and inserted a reference to special agents in subsec. (d).

##### Title of Act:

An Act providing for the payment of the salary, medical and hospital expenses of members of the State Police Force, of the enforcement officers and investigators employed by the Pennsylvania Liquor Control Board, and the parole agents, enforcement officers and investigators of the Pennsylvania Board of Probation and Parole, Capitol Police officers, correction officers employed by the Department of Corrections whose principal duty is the care, custody and control of inmates, psychiatric security aides employed by the Department of Public Welfare and the Department of Corrections whose principal duty is the care, custody, and control of the criminally insane, drug enforcement agents of the Office of Attorney

General whose principal duty is the enforcement of the drug laws of the Commonwealth, special agents of the Office of Attorney General whose principal duty is the enforcement of the criminal laws of the Commonwealth, members of the Delaware River Port Authority Police and of policemen, firemen and park guards by the Commonwealth of Pennsylvania, the Delaware River Port Authority, counties, cities, boroughs, towns and townships, who are injured or contract certain diseases in the performance of their duty; and providing that absence during such injury shall not reduce any usual sick leave period. 1935, June 28, P.L. 477, amended 1937, May 14, P.L. 632, § 1; 1945, March 29, P.L. 100, § 1; 1951, May 16, P.L. 301, § 1; 1951, Sept. 27, P.L. 1473, § 1; 1955, July 7, P.L. 259, § 1; 1959, Dec. 15, P.L. 1750, No. 655, § 1; 1961, July 25, P.L. 867, § 1; 1978, July 1, P.L. 687, No. 117; 1986, Dec. 19, P.L. 1733, No. 208; 1996, Dec. 19, P.L. 1438, No. 183.

#### Cross References

Death benefits, law enforcement officers killed in line of duty, see 53 P.S. §§ 891, 892.  
Occupational disease benefits, agreement or award, time for review, modification or reinstatement, see 77 P.S. § 1513.  
Workmen's compensation, notice of compensation payable, agreement, or award, time for review, modification or reinstatement, see 77 P.S. § 772.

## PUBLIC OFFICERS

Pe

Work-related disability leave

Municipal Corporations  
200(5).  
WESTLAW Topic No. 268.  
C.J.S. Municipal Corporat:  
589, 614, 615.

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Performance of duties 8  
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Validity 1

#### 1. Validity

This section providing for compensation of policemen and during disability, together with expenses, involves no unlawful action and is not unconstitutional. Borough of Monaca, 3 Lawr. 134, 36 Mun. 17, affirmed 43 Pa. Super. 46; *Iben v. Borough of Monaca*, 3 Lawrence L.J. 204, 39, 1945, affirmed 43 A.2d Pa. Super. 46.

## 53 P.S. § 637

Note 29

*v. Commonwealth of Pennsylvania, Pennsylvania State Police*, 499 A.2d 278. *Cunningham v. Com.*, Pennsylvania State Police, 507 A.2d 40, 510 Pa. 74, Sup.1986.

Burden is on plaintiff to show that the disease contracted arose directly out of exposure and not merely that it was contracted during the course of his employment as a fireman. *Ford v. City of Erie*, 39 Erie C.L.J. 189 (1956).

### 30. Sufficiency of evidence

Finding that state policeman was permanently disabled, for purposes of terminating benefits under Heart and Lung Act [53 P.S. § 637], was sufficiently supported by evidence that officer's disability, stemming from lower back injury, had persisted for 595 days prior to termination decision, lack of favorable prognosis and evidence of 40 to 50% permanent partial disability. *Cunningham v. Com.*, Pennsylvania State Police, 507 A.2d 40, 510 Pa. 74, Sup.1986.

Where the municipality admitted a workmen's compensation award, such admission did not constitute a res judicata award so as to permit judgment on the pleadings for the plaintiff under this section. *Ryan v. City of Erie*, 39 Erie C.L.J. 129 (1956).

### 31. Review

Commonwealth Court's scope of review on appeal from determination of state police that its employee's disability could not be considered "temporary," for purposes of the Heart and Lung Act is limited, but Court has an affirmative obligation to reverse an adjudication lacking substantial support on the record. *Palmeri v. Com.*, Pennsylvania State Police, 474 A.2d 1223, 82 Pa.Cmwth. 348, Cmwth.1984, affirmed 499 A.2d 278, 508 Pa. 544.

Where letter from state police removed former officer from status of disability leave and ordered him back to work, and the former officer, by force of such letter,

## § 638. Sick leave not affected

No absence from duty of any such policeman or fireman by reason of any such injury shall in any manner be included in any period of sick leave, allowed such policeman or fireman by law or by regulation of the police or fire department by which he is employed. 1935, June 28, P.L. 477, § 2.

## GENERAL MUNICIPAL LAW

no longer had status entitling him to full salary under "Heart and Lung Act" and its benefits after specified date, the letter announced determination affecting personal or property rights of the officer, and was "final adjudication" from which the former officer had 30 days to appeal. *Lamolinara v. Com.*, Pennsylvania State Police, 414 A.2d 1126, 51 Pa.Cmwth. 570, Cmwth.1980, affirmed 430 A.2d 1154, 494 Pa. 137.

Review of workmen's compensation appeal board's decision affirming referee's denial of insurer's petition to terminate payments to borough of workmen's compensation benefits for injured policeman was limited to determination of whether the findings of fact were consistent with each other and with conclusions of law and whether they could be sustained without a capricious disregard of competent evidence. *McIntosh v. Borough of Pleasant Hills*, 360 A.2d 273, 25 Pa.Cmwth. 311, Cmwth.1976.

In city fireman's action against city for disability benefits under Heart and Lung Act because of respiratory tuberculosis, where jury found plaintiff entitled to recover specified sum for temporary disability on basis of computation submitted by him, Supreme Court, on appeal from common pleas court's judgment for such sum, plus sum claimed for permanent disability, for which plaintiff was not entitled to compensation under Act, will not remand case to court below and direct another trial, but will direct entry of judgment for plaintiff in sum awarded as compensation for temporary disability only, without returning record to court below. *Creighan v. City of Pittsburgh*, 132 A.2d 867, 389 Pa. 569, Sup.1957.

Claimant should be permitted to appeal denial of benefits to administrative agency involved and to request administrative hearing in accordance with Administrative Agency Law, 71 P.S. § 1710 et seq. 1974 Op.Atty.Gen. No. 40.

## PUBLIC OFFICERS & EM

In general 2  
Actions 5  
Parole agents 4  
Purpose 3  
Validity 1

### 1. Validity

This section is constitutional though second class A cities are excepted. *Deuweiler v. City of Allentown*, 1 L.J. 397, 1938.

### 2. In general

Members of the state police temporarily incapacitated by an injury sustain the course of duty continue to accrue leave, annual leave and such other rights as they would otherwise have entitled to absent the injury. 1974 Op.Atty.Gen. No. 4.

Provisions of 71 P.S. § 82, do not prohibit member of Pennsylvania State Police from taking 15 days leave of absence during calendar year no matter many days he has been absent from duty under provisions of § 637 of this title and this section. 1958 Op.Atty.Gen.

## § 639. Policemen; borough expenses.

(a) The minimum annual salary paid the full-time members of township by the borough, two hundred dollars (\$5,200) of any borough, town or township, the borough, town or township less than five thousand two hundred dollars or compensation shall be in excess of two hundred dollars (\$5,200). The provisions of this section shall not apply to a policeman receiving an annual salary less than the minimum annual salary.

(b) Any borough, town or township gaining or otherwise, entering into a contract with its police officers to pay and attorneys' fees incurred in connection with any such officer in the scope



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PAUL SILBERBLATT 1954-1985  
F. CORTEZ BELL, JR. 1954-1995 (Ret.)

OF COUNSEL  
DANIEL C. BELL

March 28, 2002

Re: Heart and Lung Benefits/James  
E. Dohner

Lawrence Township Board of Supervisors  
P.O. Box 508  
Clearfield, PA 16830

Dear Gentlemen:

I am writing this letter on behalf of James E. Dohner who has consulted me concerning the filing of a heart and lung claim in regard to his employment with the Lawrence Township Police Department. Officer Dohner has been unable to work for the Police Department since October 2, 2001 at which time he suffered a heart attack and a result of that has not been released by his treating physicians in order to resume his normal duties. Initially it was hoped that as a result of cardiac rehabilitation that he would be in a position to once again continue to serve on the Lawrence Township Police Department, however, further tests and occurrences now make it quite probable that he would not be in a position that his physicians would release him for return to his employment.

The Commonwealth of Pennsylvania has certain statutes which protect various classifications of employees who are disabled either as a direct result of their employment or in any fashion which can be derived from their employment. Those provisions are found within the Heart and Lung Act which is found at 53 P.S. §637 and §638. The Sections of the Heart and Lung Act carry within themselves specific provisions for diseases of the heart and tuberculosis of the respiratory system. Under the provisions of the Heart and Lung Act the disabled officer is to receive his full payment or salary during the time period of his disability and his sick leave can not be affected and if any sick leave has already been taken the same must be restored to the officer's account. Many municipalities, in light of the apparent cost of the Heart and Lung Act provisions, have



March 28, 2002

Re: James E. Dohner

Page 2

obtained insurance which protects them against any Heart and Lung claims. If you have any such insurance I believe the appropriate procedure would be simply to turn this letter over to the insurance carrier or agent and they can contact me directly.

It is my understanding that to this date Mr. Dohner has been using his sick days in order to assure that he continues to receive his regular pay from the Township. I would ask you to review his claim for benefits and please advise me as to the Township's status such that hopefully we might be able to resolve this matter in an amicable fashion. A copy of this letter is also being sent to the Township Solicitor such that the Solicitor's office will be aware of Mr. Dohner's claim and would be in a position to advise you accordingly. Should you have any questions whatsoever, please feel more than free to contact me.

Very truly yours,

BELL, SILBERBLATT & WOOD

By,

A handwritten signature in dark ink, appearing to read "F. Cortez Bell, III". The signature is stylized with a large "F" and "C" and a Roman numeral "III" at the end.

F. Cortez Bell, III, Esquire

FCBIII/day

Enclosures

cc: James A. Naddeo, Esquire, Solicitor

# LAWRENCE TOWNSHIP BOARD OF SUPERVISORS

## SUPERVISORS

MELVIN L. SMITH  
WILLIAM D. LAWHEAD  
EDWARD E. BROWN

(814) 765-0176



P.O. BOX 508  
CLEARFIELD, PA. 16830

SECRETARY-TREASURER  
BARBARA SHAFFNER

(814) 765-4551

FAX (814) 765-5258

E-Mail ltbos@pennswoods.net

June 20, 2002

James E. Dohner  
332 Turnpike Avenue  
Clearfield, PA 16830

Dear Jim,

It has been brought to our attention that your sick, vacation, personal and holidays will be used up by June 22, 2002. As per the attached letter from State Workers, your claim for Heart & Lung was denied, therefore your employment with Lawrence Township will cease as of June 22, 2002. Because of your employment terminating in June your Select Blue Health Insurance thru Select Blue will be covered until July 31, 2002. At this time you may elect to pick up the Insurance coverage under COBRA.

Please let the Township Secretary know before July 10, 2002 of your intentions for health coverage. The following is a break down on your current coverage: (these prices are subject to change.)

Medical	\$1,013.31
Vision & Dental	53.00
TOTAL	\$1,066.31

### Single Coverage(Employee only)

Medical	\$ 326.54
Vision	2.61
Dental	23.70
TOTAL	\$ 352.85

LTBOS/bss

Enclosures  
Cc;F. Cortez Bell III

Lawrence Township Board of Supervisors,

*William D. Lawhead*

William D. Lawhead, Chairman

*Melvin L. Smith*

Melvin L. Smith, Vice Chairman

*Edward E. Brown*

Edward E. Brown, Supervisor

NOTICE OF WORKERS'  
COMPENSATION DENIAL

EMPLOYEE SOCIAL SECURITY NUMBER

269407509

DATE OF INJURY

10/02/2001

MONTH

DAY

YEAR

PA BWC CLAIM NUMBER (IF KNOWN)

DATE OF NOTICE

04/22/2002

MONTH

DAY

YEAR

EMPLOYEE

EMPLOYER

First Name James

Last Name Dohner

Address 332 Turnpike Avenue

Address

City/Town Clearfield

State PA

Zip 16830

County Clearfield

Telephone 8147651437

Name Lawrence Twp Board of Supervisors

Address P.O. Box 508

Address

City/Town Clearfield

State PA

Zip 16830

County Clearfield

Telephone 8147654551

FEIN

INSURER or THIRD PARTY ADMINISTRATOR (if self insured)

Name State Workers' Insurance Fund

Address 607 Main Street

Address Suite 300

City/Town Johnstown

State PA

Zip 16830

Telephone 8145332351

Bureau Code 001

County Cambria

Claim # 1417703-04

FEIN

NOTICE: A copy of this Notice of employer/insurer intent to deny the claimant's right to workers' compensation benefits must be sent to the employee or dependent not later than 21 days of employer's notice or knowledge of employee's disability or death. The original to be filed with the Bureau. Failure to comply may result in imposition of penalties.

The employer/insurer declines to pay workers' compensation benefits to claimant because:

1. The employee did not suffer a work-related injury. The definition of injury also includes aggravation of a pre-existing condition, or disease contracted as a result of employment.
2. The injury was not within the scope of employment.
3. The employee was not employed by the defendant.
4. Although an injury took place, the employee is not disabled as a result of this injury within the meaning of the Workers' Compensation Act.
5. The employee did not give notice of his/her injury or disease to the employer within 120 days within the meaning of Sections 311-313 of the Workers' Compensation Act.
6. Other good cause. Please explain fully in the space below. Failure to obtain medical confirmation of the injury will not be considered good cause to deny benefits if caused by dilatory conduct of insurance carrier or employer.

If it is alleged that physicians' reports were requested and not received, please give the date(s) they were requested. Attach a copy of request(s) for release(s). List dates:

Name of Claims Representative

Signature of Claims Representative

Individual filing misleading or incomplete information knowingly and with intent to defraud is in violation of Section 1102 of the Pennsylvania Workers' Compensation Act. It may also be subject to criminal and civil penalties through Pennsylvania Act 165.

SEE OTHER SIDE FOR EMPLOYEE'S RIGHT TO FILE PETITION CONTESTING DENIAL



496 1197-1

Phone Number

## EMPLOYEE'S RIGHTS TO CONTEST DENIAL OF WORKERS' COMPENSATION BENEFITS

You have the right to contest this denial of your claim for workers' compensation benefits. Your petition will be heard by a Workers' Compensation Judge. You and your employer will have the opportunity to testify and provide medical evidence with respect to your claim. Both you and your employer will have the right to bring witnesses. You may retain an attorney to represent you in this proceeding although representation by an attorney is not required by law. Because of the legal complications that can arise in occupational disease and workers' compensation cases, you may want to consider legal advice. If you do not know how to contact an attorney, please contact your local Bar Association Lawyer Referral Service.

The procedure for filing a petition is as follows :

1. At your request, a petition will be mailed to you. You and/or your attorney need to fill this out and return it to the Bureau with appropriate copies. One copy should be sent by you to your employer.
2. A petition for an injury must be filed within three years of the date of injury. For occupational disease claims, disability or death must occur within 300 weeks from last exposure. A petition must be filed no later than three years from that date. Failure to file a petition within these rules may result in loss of your claim.
3. You must give notice of your work-related injury or disease to your employer within 120 days of the date you knew (or should have known) that you were injured or had contracted a work-related disease.
4. When your petition is received by the Bureau of Workers' Compensation, it will be assigned to a Judge for hearing. You will be notified of your hearing date. All parties are requested to be fully prepared prior to the first hearing.

you need petition forms or have questions, please contact the Bureau of Workers' Compensation :

TOLL FREE : 800-482-2383

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

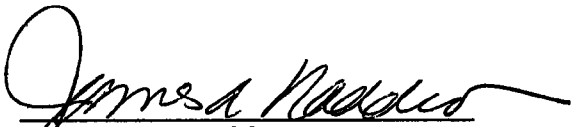
JAMES E. DOHNER,	*	
Plaintiff,	*	
	*	
v.	*	No. 02-1168-CD
	*	
LAWRENCE TOWNSHIP and	*	
LAWRENCE TOWNSHIP BOARD	*	
OF SUPERVISORS,	*	
Defendants.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Defendant's Preliminary Objections filed in the above-captioned action was served on the following person and in the following manner on the 31<sup>st</sup> day of July, 2002:

Hand Delivered

F. Cortez Bell, III, Esquire  
318 East Locust Street  
P. O. Box 670  
Clearfield, PA 16830

  
James A. Naddeo  
Attorney for Defendant

JAMES A. NADDEO  
ATTORNEY AT LAW  
211 1/2 E. 7th Street  
P.O. BOX 552  
CLEARFIELD, PENNSYLVANIA 16830

Lap over margin

6x

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

JAMES E. DOHNER,  
Plaintiff

vs.

No. 02-1168-CD

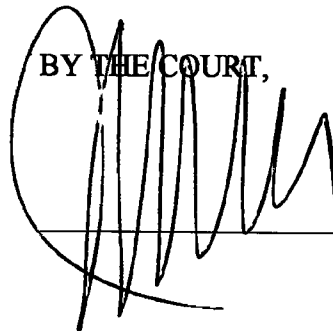
LAWRENCE TOWNSHIP and  
LAWRENCE TOWNSHIP BOARD  
OF SUPERVISORS,  
Defendants

RULE RETURNABLE

AND NOW, this 29<sup>th</sup> day of July, 2002 upon consideration of the Motion for Injunctive Relief filed with regard to the above-captioned matter, it is the Order of this Court that a Rule is directed to Lawrence Township and the Lawrence Township Board of Supervisors to appear and show cause why the prayer of said Motion for Injunctive Relief should not be granted.

Said Rule Returnable on the 1<sup>st</sup> day of August, 2002 at 10:30 o'clock A. M. for hearing before this Court in Courtroom No. 1.

BY THE COURT,



**FILED**

JUL 29 2002

012:10/mg  
William A. Shaw  
Prothonotary  
Sent to App

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA CIVIL DIVISION No.	
JAMES E. DOHNER,  vs.  LAWRENCE TOWNSHIP and LAWRENCE LAWRENCE TOWNSHIP BOARD OF SUPERVISORS,	Plaintiff       Defendants
RULE	
<p>BELL, SILBERBLATT &amp; WOOD ATTORNEYS AT LAW 318 EAST LOCUST STREET P. O. BOX 870 CLEARFIELD, PA. 16830</p>	

COMMERCIAL PRINTING CO., CLEARFIELD, PA.

**FILED**

JUL 29 2002

William A. Shaw  
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

JAMES E. DOHNER

-vs-

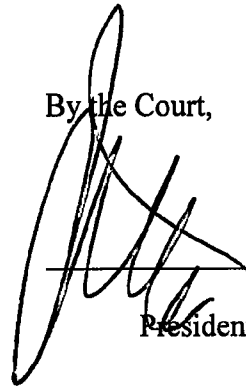
LAWRENCE TOWNSHIP and  
LAWRENCE TOWNSHIP BOARD OF  
SUPERVISORS

No. 02 – 1168 – CD

**ORDER**

NOW, this 1<sup>st</sup> day of August, 2002, upon agreement of the parties, it is the  
ORDER of this Court that Defendant shall provide to Plaintiff the same medical coverage that  
he had been receiving prior to his disability and payment of union dues pending final  
determination on the merits.

By the Court,



President Judge

**FILED**

AUG 01 2002

William A. Shaw  
Prothonotary

FILED

AUG 01 2002

011241 KSC Atty Bel  
William A. Shaw  
Prothonotary

cc atty Naddoo  
KSC

**In The Court of Common Pleas of Clearfield County, Pennsylvania**

Sheriff Docket # 12837

DOHNER, JAMES E.

02-1168-CD

VS.

LAWRENCE TOWNSHIP and LAWRENCE TOWNSHIP BOARD OF SUPER.

**MOTION FOR INJUNCTIVE RELIEF & COMPLAINT IN EQUITY**

**SHERIFF RETURNS**

NOW AUGUST 1, 2002 AT 10:26 AM DST SERVED THE WITHIN MOTION FOR INJUNCTIVE RELIEF & COMPLAINT IN EQUITY ON LAWRENCE TOWNSHIP, DEFENDANT AT EMPLOYMENT, PO BOX 508, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO WILLIAM LAWHEAD, SUPERVISOR A TRUE AND ATTESTED COPY OF THE ORIGINAL MOTION FOR INJUNCTIVE RELIEF & COMPLAINT IN EQUITY AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: DAVIS/MORGILLO

NOW AUGUST 1, 2002 AT 10:26 AM DST SERVED THE WITHIN MOTION FOR INJUNCTIVE RELIEF & COMPLAINT IN EQUITY ON LAWRENCE TOWNSHIP BOARD OF SUPERVISORS, DEFENDANT AT EMPLOYMENT, PO BOX 508, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDNIG TO WILLIAM LAWHEAD, SUPERVISOR A TRUE AND ATTESTED COPY OF THE ORIGINAL MOTION FOR INJUNCTIVE RELIEF & COMPLAINT IN EQUITY AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: DAVIS/MORGILLO

**Return Costs**

Cost	Description
26.37	SHFF. HAWKINS PAID BY; ATTY.
20.00	SURCHARGE PAID BY: ATTY.

**FILED**

*BA*  
AUG 29 2002  
01:58 *BA*

William A. Shaw  
Prothonotary

Sworn to Before Me This

29 Day Of August, 2002  
*William A. Shaw*

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2006  
Clearfield Co., Clearfield, PA

So Answers,

*Chester A. Hawkins*  
*by Marly Hamr*  
Chester A. Hawkins  
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
(Civil Division)

JAMES E. DOHNER,  
Plaintiff

v.

LAWRENCE TOWNSHIP AND  
LAWRENCE TOWNSHIP BOARD OF  
SUPERVISORS,  
Defendants

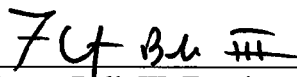
No. 02-1168-CD

**NOTICE OF INTENTION TO PROCEED**

To the Court:

James P. Dohner, the Plaintiff herein, intends to proceed with the above captioned matter.

Date: August 6, 2007

  
\_\_\_\_\_  
F. Cortez Bell, III, Esquire  
Attorney for Plaintiff  
James E. Dohner

FILED  
07/25/07 2cc  
AUG 06 2007 Atty Bell  
CK  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
(Civil Division)

JAMES E. DOHNER,  
Plaintiff

v.

LAWRENCE TOWNSHIP AND  
LAWRENCE TOWNSHIP BOARD OF  
SUPERVISORS,  
Defendants

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No. 02-1168-CD

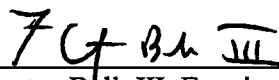
**CERTIFICATE OF SERVICE**

I hereby certify that I am this day serving upon the persons and in the manner indicated  
below a true and correct copy of the Statement of Intention to Proceed.

Service by first class mail, postage prepaid addressed as follows:

James A. Naddeo, Esquire  
207 East Market Street  
P.O. Box 552  
Clearfield, PA 16830

Dated: August 6, 2007

  
F. Cortez Bell, III, Esquire  
Attorney for Plaintiff

2 cns to ATR

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES E. DOHNER  
Plaintiff

vs.

LAWRENCE TOWNSHIP  
LAWRENCE TOWNSHIP BOARD OF SUPERVISORS  
Defendants

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\*  
\*  
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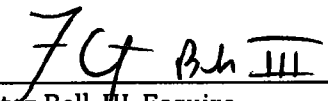
CD  
NO. 2002-1168-MD

**PRAECIPE**

TO: WILLIAM A. SHAW, PROTHONOTARY:

Please mark the above-captioned matter as "Settled, Discontinued and Ended".

Date: April 26, 2013

  
\_\_\_\_\_  
F. Cortez Bell, III, Esquire  
Attorney for Plaintiff

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION**

JAMES E. DOHNER  
Plaintiff

vs.

LAWRENCE TOWNSHIP  
LAWRENCE TOWNSHIP BOARD OF SUPERVISORS  
Defendants

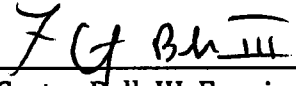
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\*  
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\*

NO. 2002-1168-MD

**CERTIFICATE OF SERVICE**

I hereby certify that on April 26, 2013, a true and correct copy of this Praecipe, filed on behalf of the Plaintiff, was sent by regular U.S. Mail, postage prepaid to:

James Naddeo, Esquire  
Naddeo & Lewis  
P.O. 552  
Clearfield, Pa 16830

  
\_\_\_\_\_  
F. Cortez Bell, III, Esquire