

**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA/ : No. 3 EAL 2009
DEPARTMENT OF PUBLIC WELFARE :
v. : Petition for Allowance of Appeal from the
 : Order of the Commonwealth Court
 :
WORKERS' COMPENSATION APPEAL :
BOARD (HARVEY) :
 :
 :
PETITION OF: LARRY HARVEY :
 :
 :
 :

ORDER

PER CURIAM

AND NOW, this 13th day May 2009, the Petition for Allowance of Appeal is **GRANTED, LIMITED TO** the issue set forth below. Allocatur is **DENIED** as to all remaining issues. The issue, as phrased by petitioner, is:

When the evidence establishes that an employer has contributed very little, if anything, to a claimant's pension during [the] years in which the claimant was employed and participated in [a defined benefit] plan, did the Commonwealth Court err by:

(1) affirming its decisions in Pennsylvania State University/PMA Insurance Group v. WCAB (Hensal), 911 A.2d 225 (Pa. Cmwlth. 2006) and Department of Public Welfare/Western Center v. WCAB (Cato), 911 A.2d 241 (Pa. Cmwlth. 2006), and holding that an employer meets its burden of proof by only presenting evidence of an actuarially assumed rate of annual return on an employer's contribution rather than evidence confirming the actual rate of return on the pension; and

(2) disregarding the plain language of Section 204(a) of the Workers' Compensation Act, 77 P.S. § 71(a), which grants an employer a credit

against an employee's pension **only** "to the extent [the pension is] funded by the employer directly liable for the payment of workers' compensation"?