



## Home Modifications: It Is The Unusual Case That Warrants Extraordinary Relief

By James P. Paoli, Esq.

On December 5, 2014, the Appellate Division addressed whether an employer must provide home modifications for an employee in Loeber v. Fair Lawn Board of Education, A-1990-13T1 (App. Div.). The employee was involved in a work-related accident in November 2009, which resulted in partial paralysis and confinement to a wheelchair. In October 2011, the employee requested home modifications along with psychiatric care. The employer agreed to provide psychiatric care along with only some of the requested home modifications. In 2013, the Division of Workers' Compensation held a trial to address the employee's request for the remaining modifications.

The employee, along with his expert in "home modification for disabled people," testified in support of having the employee's kitchen expanded, the family living room floor raised, and a lift platform installed. The employee also sought access to the second floor, which contained his son's bedroom, and to the basement where the employee wanted to perform woodworking. In response, the employer produced a licensed occupational therapist who recommended that the employee have a workshop built in the garage and that the son's bedroom be moved to the

first floor of the home. The Judge of Compensation found the employee to be credible and ordered the requested home modifications. In finding that an elevator was necessary, the Judge determined that the Petitioner's "long-term mental health will be enhanced by having the ability to live in a barrier free home with his wife and preadolescent son." The employer appealed, challenging the installation of an elevator, lifting the floor of the family room, the modification of the kitchen, and reimbursement for installation of the turn platform.

The Appellate Division relied upon Squeo v. Comfort Control Corp., in addressing the fact that home modifications are only permitted in limited, unique circumstances. The Supreme Court held in Squeo that an employee is entitled to home modifications when it is reasonable and necessary. Moreover, an employee establishes that his requested relief is "reasonable and necessary" to cure and relieve him when it is supported by sufficient competent evidence. In addition, the Supreme Court advised that the cost to provide the relief must be reasonable.

In reviewing the transcript, the Appellate Division noted that the Judge of Compensation visited the employee's

home on two occasions. In relying upon the Judge of Compensation's first-hand observations, the Appellate Division affirmed the Judge's decision to all contested issues with the exception of the elevator. The Appellate Division reversed the Judge of Compensation's decision with respect to the elevator as there was nothing in the record to demonstrate that it was necessary and its cost, reasonable. More particularly, the Appellate Division addressed the fact that the Judge of Compensation considered the employee's mental health despite the fact that there was no testimony concerning the employee's psychological needs. The Appellate Division cited Squeo in cautioning that it is "only the unusual case that may warrant . . . extraordinary relief."

While the Appellate Division relied largely upon the Judge of Compensation's observations with respect to the need for the modifications, it was not willing to affirm the need for an elevator where its cost was not considered and the positive impact the elevator would have on the employee's mental health was not supported by evidence.

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