

DANNY C. ALLEN, Employee v. BUDGET FOREIGN AUTO PARTS and MN WORKERS' COMP. ASSIGNED RISK PLAN/WAUSAU INS. CO., Employer-Insurer, and MCCASHIN & ASSOC., Rehab. Provider/Appellant.

WORKERS' COMPENSATION COURT OF APPEALS  
MAY 22, 1998

HEADNOTES

ATTORNEY FEES - HEATON FEES. Compensation judge properly denied QRC's request for Heaton fees where attorney was retained by QRC to obtain payment for his services and employee was not a part of the proceeding.

Affirmed.

Determined by Johnson, J., Hefte, J., and Wheeler, C.J.  
Compensation Judge: Danny P. Kelly

OPINION

THOMAS L. JOHNSON, Judge

McCashin & Associates, the rehabilitation provider, appeal the compensation judge's denial of attorney's fees under Heaton v. J.E. Fryer & Co., 36 W.C.D. 319 (W.C.C.A. 1983).

BACKGROUND

Danny C. Allen, the employee, sustained an admitted personal injury on June 15, 1994. The employee retained Gary Meyer, Esq., to represent him. Mr. Meyer filed a rehabilitation request seeking a rehabilitation consultation with Patrick McCashin, a qualified rehabilitation consultant (QRC). Budget Foreign Auto Parts, the employer, and the Minnesota Assigned Risk Plan/Wausau Insurance Company, the insurer, agreed to the consultation. QRC McCashin met with the employee, concluded he was a qualified employee and filed the consultation report. QRC McCashin next prepared a rehabilitation plan. The employer and insurer did not sign the plan or otherwise object to the plan. The QRC then filed a rehabilitation request seeking payment for his services. Following an administrative conference, the employer and insurer were ordered to pay QRC McCashin's bill. The employer and insurer filed a request for formal hearing. The employee later filed a claim petition seeking payment of permanency benefits, mileage expenses and rehabilitation benefits. The claim petition was consolidated with the request for formal hearing.

Before a hearing was scheduled, the employee and the employer and insurer settled all disputes except Mr. McCashin's claim for payment for his services. A stipulation for settlement was signed by the employee, Mr. Meyer and counsel for the employer and insurer.<sup>1</sup> QRC McCashin was not a party to the stipulation for settlement. Compensation Judge Danny P. Kelly issued a partial award on stipulation on September 19, 1996.

In January 1997, Mr. McCashin retained DeAnna M. McCashin, attorney at law, to obtain payment for the rehabilitation services provided to the employee. The employer and insurer denied liability and contended the employee was not qualified for rehabilitation services. QRC McCashin's rehabilitation request was heard before Judge Kelly on May 21, 1997. The compensation judge ordered the employer and insurer to pay Mr. McCashin's outstanding bill. Thereafter, Attorney McCashin filed a request for Heaton fees. The employer and insurer objected. Judge Kelly heard the case on December 8, 1997. The judge denied the claim for Heaton fees in Findings and Order served and filed December 15, 1997. QRC McCashin appeals.

## STANDARD OF REVIEW

"[A] decision which rests upon the application of a statute or rule to essentially undisputed facts generally involves a question of law which [the Workers' Compensation Court of Appeals] may consider de novo." Krovchuk v. Koch Oil Refinery, 48 W.C.D. 607, 608 (W.C.C.A.) 1993).

## DECISION

The compensation judge concluded no statute or rule allows payment of attorney's fees to Attorney McCashin since she did not represent the employee. Accordingly, the judge denied the request for Heaton fees. The appellant argues he was required to obtain legal counsel to represent him at the hearing of May 21, 1997. The issue at that hearing was whether the employee was a qualified employee for rehabilitation services under Minn. Stat. § 176.102. The compensation judge found the employee was qualified. Accordingly, the appellant argues, the issue was entitlement to rehabilitation benefits and an award of Heaton fees is appropriate.

In Heaton v. J.E. Fryer & Co., 36 W.C.D. 316 (1983) this court awarded attorney's fees to the employee's attorney for legal services provided to recover rehabilitation expenses. In Weisser v. Country Club Markets, 397 N.W.2d 891, 39 W.C.D. 282 (Minn. 1987), the court held an attorney representing an employee may be compensated under Minn. Stat. § 176.081, subd. 1(a) (1984)<sup>2</sup> for legal services in assisting the employee in obtaining rehabilitation services. In

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<sup>1</sup> The employee settled and closed out all claims for rehabilitation and retraining benefits. In addition, the parties settled any claim by the employee and/or Mr. Meyer for Heaton fees.

<sup>2</sup> Minn. Stat. § 176.081, subd. 1(a) (1984) provided for a contingent fee to the employee's attorney. This statute further provided: Allowable fees under this chapter shall be based solely upon genuinely disputed portions of claims, including disputes related to the payment of

Kavula v. Maaco Auto, Painting and Body Shop, No. [redacted to remove SSN] (W.C.C.A. February 3, 1994), a QRC filed a rehabilitation request seeking payment of a disputed portion of the QRC's bill. The QRC was represented at the hearing by the employee's attorney. The issue at the hearing was collection of a bill and not rehabilitation services. This court concluded the attorney represented the QRC, not the employee so Heaton fees were properly denied. In similar cases, this court has denied Roraff<sup>3</sup> fees to a medical provider which successfully obtained payment of disputed medical fees. See, e.g., Kehren v. BNK Masonry, 43 W.C.D. 548 (1990); Chrz v. Sacred Heart Hospice, No. [redacted to remove SSN] (W.C.C.A. February 13, 1990); Mabee v. Tri-State Insurance Co., No. [redacted to remove SSN] (W.C.C.A. June 22, 1988); Mattson v. Don's Leather Cleaning, No. [redacted to remove SSN] (W.C.C.A. May 18, 1988).

The appellant agrees Heaton fees are not appropriate where the sole issue is payment of the bill of a medical or rehabilitation provider. Here, however, the appellant asserts the issue was whether the employee was a qualified employee. This is a rehabilitation issue. Accordingly, the appellant argues Kavula is inapplicable and an award of Heaton fees is proper. We disagree. The rationale for Heaton fees is to assure legal representation for employees where a successful outcome in the dispute would not provide funds directly to an employee from which an attorney fee could be taken. Kavula, slip op. at 3. The employee was not a party to this proceeding. The employee's entitlement to further rehabilitation services was foreclosed by the stipulation for settlement. The purpose of the hearing was collection of the QRC's bill. That the QRC was first required to prove the employee was qualified does not transmute the case into a rehabilitation dispute. Attorney McCashin represented QRC McCashin not the employee. Therefore, Heaton fees were not appropriate.

The appellant next makes equitable and public policy arguments supporting the claim for Heaton fees. The compensation judge awarded QRC McCashin \$2,367.55 for the rehabilitation services provided the employee. Attorney McCashin claims \$1,925.00 in attorney fees incurred to prove the claim. If QRC McCashin is not reimbursed for the attorney fees, he asserts he will be grossly undercompensated for the rehabilitation services provided. This is an inequitable result the appellant contends. Further, the appellant asserts such a result will encourage insurers to deny legitimate bills of rehabilitation providers in other cases. The appellant argues this is contrary to good public policy. We are not persuaded.

We agree a rehabilitation provider may not be fully compensated when the provider must pay attorney fees to effect collection of a bill. This, however, is a problem faced by many creditors attempting to collect debts. Whether less than full recompense is fair or is an equitable result is outside our purview. Not every party that prevails in a workers' compensation dispute is entitled to attorney fees. The rationale for an award of Heaton fees simply is not applicable in this case and the compensation judge properly denied attorney fees.

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rehabilitation benefits or to other aspects of a rehabilitation plan.

<sup>3</sup> Roraff v. State of Minnesota, 288 N.W.2d 15, 32 W.C.D. 297 (Minn. 1980).

The appellant next argues it is against public policy to allow the employer and insurer to negotiate a settlement with the employee and leave the rehabilitation provider to prove the employee's right to rehabilitation services and to bear the cost of same. Appellant contends such a policy will only encourage employer and insurers to deny legitimate claims of rehabilitation and medical providers. In support of this position, the appellant cites Le v. Kurt Mfg. Co., 557 N.W.2d 202, 55 W.C.D. 650 (Minn. 1996). We do not agree the Le case is applicable here.

The compensation judge approved the settlement between the employer and insurer and the employee despite the fact QRC McCashin's claim was not also settled. QRC McCashin, however, made no claim that he was excluded from the settlement negotiation process and therefore entitled to full reimbursement under Brooks v. A.M.F., Inc., 278 N.W.2d 310, 31 W.C.D. 521 (Minn. 1979). Neither did QRC McCashin request a so-called Parker-Lindberg hearing after the settlement. See Parker-Lindberg v. Friendship Village, 395 N.W.2d 713, 39 W.C.D. 125 (Minn. 1986). The Le case cited by the appellant involved the application of Brooks v. A.M.F.. Accordingly, the Le case is not applicable here.

Based on our past cases, it should only be the rare instance in which a hearing judge may approve a settlement to which a health or disability insurer refuses to join, thereby leaving the intervenor to pursue recovery by adjudication on the merits if it so chooses. Le v. Kurt Mfg. Co., 557 N.W.2d 202, 205, 55 W.C.D. 650, 654 (Minn. 1996) (citations omitted). Similarly, a compensation judge should closely scrutinize a proposed settlement to which a rehabilitation provider refuses to join. The stipulation for settlement in this case set forth the claims of QRC McCashin and the insurer's defense that the employee was not a qualified employee for vocational rehabilitation purposes. The stipulation further provided the employer/insurer and QRC McCashin were unable to resolve their differences. The compensation judge must also weigh the interests of the employee to effect a settlement of the case. In this case, we cannot conclude the compensation judge improperly approved the stipulation for settlement.