JUDY J. CLAY, Employee, v. AMERICAN RESIDENTIAL MORTGAGE CORP., Employer/Appellant, and MINNESOTA WORKERS' COMPENSATION ASSIGNED RISK PLAN/ BERKLEY ADM'RS, and UNINSURED, Insurers, and FAIRVIEW SOUTHDALE HOSP., NORTHBROOK PROPERTY AND CASUALTY CO., and NORTHWEST ANESTHESIA, P.A., Intervenors, and SPECIAL COMPENSATION FUND.

WORKERS' COMPENSATION COURT OF APPEALS
NOVEMBER 6, 1998

No. *[redacted to remove social security number]*

HEADNOTES

INSURANCE - COVERAGE; STATUTES CONSTRUED - MINN. STAT. § 176.183, SUBD. 1(a). The insurer, MARP/Berkley, provided proper notice of cancellation to the employer pursuant to Minn. Stat. § 176.183, subd. 1(a). The notice was effective within 30 days after filing of the notice with the Commissioner. Although the Commissioner failed to separately notify the employer as required by Minn. Stat. § 176.183, subd. 1(a), the commissioner's notification is not a condition precedent for effective cancellation of workers' compensation insurance coverage.

EQUITABLE ESTOPPEL - SUBSTANTIAL EVIDENCE. Substantial evidence supports the compensation judge's determination that the insurer, MARP/Berkley, did not mislead the employer, and that the doctrine of equitable estoppel should not be applied to foreclose the insurer's denial of coverage.

Affirmed.

Determined by Johnson, J., Wilson, J., and Pederson, J.
Compensation Judge: David S. Barnett

OPINION

THOMAS L. JOHNSON, Judge

American Residential Mortgage Corporation appeals the compensation judge's determination that it was uninsured for workers' compensation liability on April 7, 1995. We affirm.

BACKGROUND

Minnesota Assigned Risk Plan, MARP, administered by Berkley Administrators, Berkley, issued a workers' compensation policy of insurance to American Residential Mortgage

Corporation, American, effective from October 7, 1993 to October 7, 1994. (Stip. 1.1.)[1] The parties agreed that American would pay its premiums in installments. An installment payment endorsement to the insurance policy required American to make an immediate premium payment of $1,409.00. Additional payments were due as follows: $702.00 on January 7, 1994; $702.00 on April 7, 1994; and $701.00 on July 7, 1994. (Stip. 1.2.)

Jude Edwardsen, vice president of American, was in charge of accounting. Her duties included payment of workers' compensation insurance premiums. As of February 14, 1994, MARP had received no premium payments from American. MARP issued a Notice of Cancellation of the workers' compensation policy on February 14, 1994. The notice told American the contract will be reinstated if total premium due of $2,111.00 is paid prior to 3/16/94. (Stip. 1.3.) On or about February 10, 1994, Ms. Edwardsen mailed a check for $1,409.00 in full payment of the initial premium due. (Stip. 1.4.) She mailed a second check in the amount of $702.00 on February 15, 1994 in payment of the January 7, 1994 installment. (Stip. 1.5.) MARP mailed to American a Notice of Reinstatement of the policy on March 16, 1994. (Stip.1.6.)

As of June 23, 1994, American had not paid the April 7, 1994 premium installment in the amount of $702.00. MARP sent American a second Notice of Cancellation which stated:

Notice of Cancellation of Workers' Compensation Policy

> The above policy is canceled as of 12:01 a.m. on July 25, 1994.
>
> Reason for cancellation:
>
> > Non-payment of premium
> > Due 4/7/94 Installment $702.00
> > Due 7/7/94 Installment $701.00
> >
> > This Contract will be reinstated if total premium due
> > of $1,403.00 is paid prior to 07/25/1994.

(Stip. 1.7; Ex. 8.) MARP timely filed the notice of cancellation with the Commissioner of the Department of Labor and Industry as required by Minn. Stat. § 176.185. (Stip. 1.16.) American did not, however, receive notice from the Commissioner as provided in Minn. Stat. § 176.185. (Stip 1.17.)

Although Ms. Edwardsen was aware that an installment plan existed for the policy, she did not diary the payment dates of the installments. Rather, she used the cancellation notices from MARP to make the payments. (T. 68.) When Ms. Edwardsen received the Notice of

[1] The parties stipulated to certain facts set forth as Findings 1.1 through 1.17 in the compensation judge's findings and order.

Cancellation dated June 23, 1994, she did not check American's records to determine whether all of the premium installments were paid. (T. 71-72.) She believed, however, the April 7, 1994 premium installment had been paid by American on February 15, 1994. (Stip. 1.8.) Ms. Edwardsen called Berkley Administrators and told a person named Andrea the April 7, 1994 payment had already been made. Andrea requested a copy of the canceled check. (T. 44-45.) Ms. Edwardsen faxed a copy of American's check dated February 15, 1994 to Berkley. (Ex. 5.) Although Ms. Edwardsen believed the check was for the installment due on April 7, 1994, in fact, the February 15, 1994 check was in payment of the January 7, 1994 installment and the installment due April 7, 1994 remained unpaid. (Stip. 1.8; T. 53-54.) On June 30, 1994, Ms. Edwardsen mailed a check in the amount of $701.00 which she believed was in payment of the July 7, 1994 installment. (Stip. 1.9.) Ms. Edwardsen did not thereafter call Andrea at Berkley to confirm that the policy was paid in full and would not be canceled. (T. 72-73.) American did not receive a Notice of Reinstatement of the policy as it had in March 1994. (T. 73.) On July 25, 1994, the insurance policy was canceled. (Ex. 8.)

On August 5, 1994, Berkley sent a workers' compensation payroll report to American. (Stip. 1.10; Ex. 10.) Ms. Edwardsen reviewed the payroll report and saw the word canceled on the document, but did not call Berkley to ask them about the report. Ms. Edwardsen believed the policy remained in effect, however. She filled out the payroll report and returned it to Berkley. (Stip. 1.11; T. 74-75.) On August 29, 1994, MARP issued a Statement of Premium Audit Adjustment for American's policy. The statement showed a policy period from October 7, 1993 to July 25, 1994 and stated a refund was owed to American. (Stip. 1.12; Ex. 11.) Thereafter, American received no further statements from MARP and did not pay any workers' compensation premiums until May 1995. (T. 80.)

Judy Clay, an employee of American, asserted a claim alleging a personal injury arising out of and in the course of her employment with American on April 7, 1995. American reported the claim to Berkley which denied that American was covered by a MARP policy on April 7, 1995. (Stip. 1.13.) Thereafter, Larry Shedd, president of American, obtained another policy with MARP effective May 12, 1995. (Stip. 1.14.)

STANDARD OF REVIEW

In reviewing cases on appeal, the Workers' Compensation Court of Appeals must determine whether the findings of fact and order [are] clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted. Minn. Stat. § 176.421, subd. 1 (1992). Substantial evidence supports the findings if, in the context of the entire record, they are supported by evidence that a reasonable mind might accept as adequate. Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 59, 37 W.C.D. 235, 239 (Minn. 1984). Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings are to be affirmed. Id. At 60, 37 W.C.D. at 240. Similarly, [f]actfindings are clearly erroneous only if the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed. Northern States Power Co. V. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975). Findings of fact should not be disturbed, even though the reviewing

court might disagree with them, unless they are clearly erroneous in the sense that they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole. Id.

DECISION

Actual Notice of Cancellation

> Minn. Stat. § 176.185, subd. 1(a), provides, in part:
>
> No policy shall be canceled by the insurer within the policy period nor terminated upon its expiration date until a notice in writing is delivered or mailed to the insured and filed with the commissioner, fixing the date on which it is proposed to cancel it, or declaring that the insured does not intend to renew the policy upon the expiration date.

The purpose of this statutory language is to provide for continuous workers' compensation coverage to all eligible employees by affording the employer ample notice and time so that he can procure insurance when his existing policy terminates or is canceled. Ives v. Sunfish Sign Co., Inc., 275 N.W.2d 41, 43, 31 W.C.D. 295, 298 (Minn. 1979). For cancellation of a workers' compensation insurance policy to be effective, the insurer must provide the insured actual notice of cancellation. Sazama Excavating v. Wausau Ins. Co., 521 N.W.2d 379 (Minn. App. 1994). The notice of cancellation must be explicit, unconditional and in clear and unequivocal language. McQuarrie v. Waseca Mutual Ins. Co., 337 N.W.2d 685, 687 (Minn. 1983).

There is no dispute the cancellation sent to American explicitly, unconditionally and unequivocally notified American the policy would be canceled effective July 25, 1994. There is also no dispute American received the notice of cancellation. Therefore, American had actual notice of cancellation within the meaning of the Sazama case. The appellant contends, however, the conduct of MARP/Berkley rendered the notice of cancellation ineffective.

Equitable Estoppel

Estoppel is an equitable doctrine intended to prevent a party from taking unconscionable advantage of his own wrong by asserting his strict legal rights. Northern Petrochemical Co. v. United States Fire Ins. Co., 277 N.W.2d 408 (Minn. 1979). In general, there are three elements of equitable estoppel: (1) promises or inducements were made by one party; (2) the other party reasonably relied upon the promises or inducements; (3) the relying party was or will be harmed if estoppel is not applied. Eide v. State Farm Mut. Auto. Ins. Co., 492 N.W.2d 549, 556 (Minn. App. 1992). See also, Lofgren v. Pieper Farms, No. *[redacted to remove social security number]* (W.C.C.A. July 18, 1997). The doctrine of equitable estoppel applies in workers' compensation cases. See, e.g., Neuberger v. Hennepin County Workhouse, 340 N.W.2d 330, 36 W.C.D. 348 (Minn. 1983); Kahn v. State, Univ. of Minn., 289 N.W.2d 737, 32 W.C.D.

351 (Minn. 1980). Whether equitable estoppel is applicable depends on the facts of each case and is a question for the trier of fact. O'Donnell v. Continental Casualty Co., 263 Minn. 326, 331, 116 N.W.2d 680, 684 (1962).

Ms. Edwardsen called Andrea at Berkley after receiving the June 23, 1994 notice of cancellation. She told Andrea the April 7, 1994 premium installment was paid and faxed a copy of a canceled check dated February 15, 1994 to Berkley. The appellant asserts, that at this point, MARP/Berkley had an affirmative duty to advise American its account was in arrears. The appellants argue Berkley's failure to respond to Ms. Edwardsen's inquiry was unconscionable given the disparity in knowledge and expertise between American and Berkley. Accordingly, American asserts the notice of cancellation was ineffective. Although it does not explicitly so state, American argues MARP's conduct should estop them from asserting its legal right to cancel the contract. That is, American contends the compensation judge erred in failing to apply the doctrine of equitable estoppel. We disagree.

There is no evidence that Andrea at Berkley said anything to mislead American. Nor did Berkley misrepresent the facts or cause American to believe the policy payments were current. Rather, American argues that once MARP/Berkley was told American believed the policy to be current, MARP/Berkley had an obligation to check their records and advise American its understanding was incorrect. The compensation judge concluded this was not a reasonable expectation, explaining in his memorandum that:

> Neither [Mr. Shedd or Ms. Edwardsen] were required to rely upon MARP/Berkley to find out whether the payments already made included all those required to be made. Nothing more than common sense was required. Ms. Edwardsen simply did not take the time to do the type of checking that she should have done. Thus any reliance by Edwardsen upon MARP/Berkley was not reasonable. In addition, the context provided by the nature of all the communications which took place, both before and after Ms. Edwardsen's telephone call and fax, do not indicate that the lack of an immediate reply addressed specifically to Ms. Edwardsen's telephone call and fax, which is only one aspect, was misleading. Considering what was at stake, it was unreasonable for Ms. Edwardsen to rely upon what she considered to be the absence of an immediate specific response addressed to the call and the fax.

The compensation judge concluded MARP/Berkley did not by word or conduct mislead American. The judge further concluded the proximate cause of American's damage was its own negligence and not any word or action of MARP/Berkley. Accordingly, the compensation judge determined the doctrine of equitable estoppel should not be applied. Substantial evidence supports this finding, and we affirm.

Notice by Commissioner

> Minn. Stat. § 176.185, subd. 1(a), further states, in part:
>
> A cancellation or termination is not effective until 30 days after written notice has been filed with the commissioner in a manner prescribed by the commissioner . . . Upon receipt of the notice, the commissioner shall notify the insured that the insured must obtain coverage from some other licensed carrier and that, if unable to do so, the insured shall request the commissioner of commerce to require the issuance of a policy as provided in section 79.251, subd. 4.

The parties stipulated American did not receive notice from the commissioner as provided by the statute. (Stip. 1-17.) If properly mailed, the appellant contends this notice from the commissioner serves as a fail safe mechanism by providing a second notice to the employer of the impending cancellation. American argues that this mechanism furthers legislative policy to provide for continuous . . . coverage to all eligible employees by affording the employer ample notice and time so that he can procure insurance when its existing policy terminates or is canceled. Ives v. Sunfish Sign Co., 275 N.W.2d 41, 43 (Minn. 1979). The failure of the commissioner to give notice, the appellant argues, violates Minn. Stat. § 176.185 and its legislative intent. Accordingly, American asserts the cancellation was ineffective.

Minn. Stat. § 176.185, subd. 1(a), places two duties on the insurer: (1) to provide the insured with notice in writing of cancellation and (2) file that notice with the commissioner. A cancellation is effective 30 days after the day the written notice is filed with the commissioner. The parties stipulate MARP provided American with written notice of cancellation and filed the notice with the commissioner as required by statute. (Stip. 1-16.) Accordingly, MARP complied with the statutory requirements for canceling an insurance policy.

Minn. Stat. § 176.185, subd. 1(a), specifically provides the cancellation is effective 30 days after the notice is filed with the commissioner. Although the commissioner is also required to notify the insured, the commissioner's notification is not a condition precedent for cancellation. There is no language in the statute to that effect. To so hold would be to rewrite the statute. Had the legislature intended such a result, the statute could explicitly so provide. The compensation judge found the failure of the commissioner to serve the required notice on American does not bar the cancellation. We agree and affirm.