

JEFFREY A. AHLMAN, Employee/Appellant, v. LENFER TRANSMISSIONS, UNINSURED, Employer, and SPECIAL COMP. FUND.

WORKERS' COMPENSATION COURT OF APPEALS
DECEMBER 20, 1999

No. [REDACTED SSN]

HEADNOTES

APPEALS - INTERLOCUTORY ORDER; JURISDICTION - SUBJECT MATTER. Where the compensation judge had issued no written findings or order relative to his oral ruling that primary liability was still at issue, where the hearing was not yet completed and there was available for review no transcript of testimony either before the compensation judge or before the settlement division judge who had earlier issued an "Order on Agreement" with regard to certain unwritten and unsigned stipulations, and where reversal of the compensation judge's ruling permitting the employer's contest of primary liability would not result in savings of counsel or court resources, the employee's appeal from the judge's oral order permitting the employer's litigation of primary liability was dismissed without prejudice for lack of subject matter jurisdiction, pending conclusion of the hearing before the judge and issuance of the judge's decision on the merits regarding primary liability and several secondary issues.

Appeal dismissed.

Determined en banc.

Compensation Judge: David S. Barnett.

OPINION

WILLIAM R. PEDERSON, Judge

The employee appeals from the compensation judge's verbal order denying his motion to dismiss on grounds of jurisdiction. We dismiss the appeal as premature.

BACKGROUND

On January 4, 1999, Jeffrey Ahlman was employed by Lenfer Transmission as a mechanic. On that date, Lenfer Transmission [the employer] was uninsured for workers' compensation liability. Mr. Ahlman [the employee] alleges that he sustained a work-related injury to his low back on that date, while lifting a heavy cast iron transfer case.

On February 5, 1999, the Special Compensation Fund [the Fund], on behalf of the uninsured employer, served a Notice of Insurer's Primary Liability Determination [NOIPLD] notifying the employee that liability for his workers' compensation claim had been accepted and

that wage loss benefits were being paid through January 26, 1999. Also on February 5, 1999, the Fund served a Notice of Intention to Discontinue Workers' Compensation Benefits [NOID], indicating that temporary total disability benefits would be discontinued effective January 26, 1999, because "[t]he ER had work within the EE's restrictions. Yet, EE is not showing up for work."

The employee objected to the discontinuance, and a conference was held on March 8, 1999, before a compensation judge in the Settlement Division of the Office of Administrative Hearings. Although no formal record of the conference was created, and the contentions of the parties are not set forth in the file, it is evident from the judge's March 23, 1999, Order on Agreement that the employee was claiming entitlement to temporary partial disability benefits from January 27, 1999, through March 6, 1999. It is evident also from that order that the parties agreed to compromise the employee's claim, with the Fund paying 50% of the amount claimed.¹

On April 6, 1999, the Fund filed a Request for Extension to investigate a new period of temporary total disability alleged by the employee, commencing March 24, 1999. On that same date, the Fund filed another NOID and another NOIPLD, contending on both forms that, "Based on further investigation, the SCF disputes that the employee sustained a work related injury on 1-4-99. Additional information was obtained from co-workers['] statements and review of the medical records."

On April 14, 1999, the Fund filed two additional forms, a Notice of Benefit Payment [NOBP] and an Amended NOID. The NOBP included the payments made pursuant to the Order on Agreement served March 23, 1999, and the Amended NOID was essentially the same as the NOID filed April 6, 1999, updated by the payments reflected in the NOBP.

On April 23, 1999, the employee filed an Objection to the NOID and NOIPLD filed by the Fund on April 6, 1999. In his Objection, the employee alleged entitlement to temporary partial disability benefits from March 7, 1999, to March 23, 1999, and temporary total disability benefits continuing from March 24, 1999.

The employee's Objection to Discontinuance came on for an expedited hearing before Compensation Judge David Barnett at the Office of Administrative Hearings on June 2, 1999. At the hearing, the employee moved to dismiss the April 6 NOID and NOIPLD on the ground that primary liability had been admitted in the Order on Agreement served March 23, 1999, and was essentially the law of the case unless vacated pursuant to Minn. Stat. § 176.461. The

¹ According to the Order on Agreement, the parties also agreed that the employee sustained a low back injury on January 4, 1999, within the course and scope of his employment, and that his average weekly wage on January 4, 1999, was \$391.10. We note, however, that the Order on Agreement was not issued pursuant to a written agreement signed by the parties in accordance with Minn. Stat. § 176.521.

compensation judge denied the employee's motion, stating, "the ruling of the Court will be that the request . . . that primary liability be now considered is hereby ruled to be not precluded by the Order on Agreement, and I'll say more about that in the Court's decision, written decision that will be issued." The parties apparently started taking testimony² but did not finish doing so by the end of June 2, 1999. A second day of hearing was set for June 17, 1999. However, the employee filed his notice of the current appeal on June 11, 1999, thus postponing further proceedings at the Office of Administrative Hearings.

On July 29, 1999, the Fund filed a Motion to Dismiss Appeal on the ground that the employee's appeal is interlocutory in nature and contrary to Minn. Stat. § 176.421. After preliminary review, on August 13, 1999, this court issued an Order Denying Motion to Dismiss Appeal.

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 jurisdiction of the Workers' Compensation Court of Appeals is governed by statute. Pursuant to Minn. Stat. § 176.421, subd. 1,

[w]hen a petition has been heard before a compensation judge, within 30 days after a party in interest has been served with notice of an award or disallowance of compensation, or other order affecting the merits of the case, the party may appeal to the workers' compensation court of appeals

(Emphasis added.) Orders which do not affect the merits of the case or prevent a later determination on the merits are not appealable to this court. Mierau v. Alcon Indus., Inc., 386 N.W.2d 741, 38 W.C.D. 652 (Minn. 1986). As a general rule, an order is appealable only if it "finally determines the rights of the parties and concludes the action." Hagen v. Hoffman Aseptic Packaging, slip op. (W.C.C.A. May 8, 1997), citing Zizak v. Despatch Indus., Inc., 427 N.W.2d 755, 756 (Minn. Ct. App. 1988). The rule is intended in part to avoid piecemeal appeals.

In the present case, the employee contends that the issue for our consideration is the validity of the March 23, 1999, Order on Agreement and the jurisdiction of the Office of

² Only the morning record of the proceedings was requested for this appeal, and our record does not include the testimony of any witnesses.

Administrative Hearings to override its own Order. He argues that, because the issue of primary liability was resolved by the March Order on Agreement and because that order remains in effect, the April NOID must be dismissed and the employee's benefits reinstated.³ It is the contention of the employer and the Fund that primary liability was not an issue at the March 8, 1999, conference and that the employee's appeal is premature, as the compensation judge's ruling does not affect the merits of the case and does not prevent a later determination on the merits. We agree with the employer and the Fund that the appeal in the present case is premature.

The merits of the employee's claims have not been finally determined in any sense by the compensation judge's ruling that he intended to consider the issue of primary liability. The compensation judge may very well determine that the employee did sustain a personal injury arising out of and in the course of his employment, thereby rendering moot the necessity of our determination. While this court has on several occasions ruled that orders denying a motion to dismiss for lack of jurisdiction are appealable, such determinations were primarily based on the requirement that the defendant "take up the burden of litigation." See Hunt v. Nevada State Bank, 285 Minn. 77, 89, 172 N.W.2d 292, 300 (1969), (cert. denied) 90 S.Ct. 1239, 397 U.S. 1010. But see Hamilton v. Twin Town Box, slip op. (W.C.C.A. Aug. 19, 1988). In the present case, however, in addition to the issue of liability, the parties apparently agreed to litigate the employee's claims for additional temporary partial and temporary total disability benefits. A final determination on the merits of the employee's motion is not necessary at this juncture in view of the fact that litigation was proceeding on other issues, and a ruling on this single issue would encourage piecemeal appeals.

It is not judicially economical for us to review the single issue before us while related issues are still being litigated before the compensation judge. Reversal of the compensation judge's ruling in this case would not result in savings of counsel or court resources. To the contrary, this appeal, in mid stream, has disrupted the court calendar on an issue which has not actually been finally determined adversely to appellant. In this case, the employer is not requesting that the compensation judge perform a function he has no authority to perform. The compensation judge's current ruling and eventual decision on the issue of primary liability both continue to be subject to review upon the judge's completion of his written decision on the merits. At this point, we have an active dispute as to a question of law, but the compensation judge has issued no written findings or order relative to that issue, nor do we have a transcript of testimony for our review. We make no determination on the merits of the employee's appeal. While the present appeal must be dismissed for lack of subject matter jurisdiction, the employee may properly raise the issue of primary liability again, if necessary, in an appeal from the judge's eventual decision on the merits in the underlying action. We therefore conclude that the present appeal is premature and that this court lacks jurisdiction to consider it.

³ It does not appear that the Fund was paying weekly compensation benefits to the employee at the time the NOID was filed. At oral argument, the parties advised this court that, in addition to the issue of primary liability, the employee's claim for additional weekly benefits was also being litigated.