

ROBERT J. BROWN, Deceased Employee, by VIVIAN BROWN, Petitioner, v. N. STATES POWER CO., SELF-INSURED, Employer/Appellant, and N. STATES POWER CO. and CNA INS. CO., Employer-Insurer, and MEDICA CHOICE/HRI, Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
AUGUST 31, 1999

No. [REDACTED SSN]

HEADNOTES

INTERVENORS - STANDING; DEPENDENCY BENEFITS; MEDICAL TREATMENT & EXPENSE. An employee's claim for medical expenses survives his death and an intervenor has standing to be reimbursed for such medical expenses.

Affirmed.

Determined by Wheeler, C.J., Wilson, J., and Pederson, J.
Compensation Judge: Danny P. Kelly.

OPINION

STEVEN D. WHEELER, Judge

The self-insured employer appeals from the compensation judge's determination that Medica Choice/Health Recovery, Inc., hereinafter HRI, the intervenor, had standing to intervene in the proceeding to recover reimbursement for medical expenses paid on behalf of the employee. We affirm.

BACKGROUND

The employee, Robert Brown, was employed by Northern States Power, the self-insured employer, from 1949 until approximately 1985. On October 19, 1995, the employee filed a claim petition in which he stated that he had sustained an "asbestos-related pleural disease" with a date of injury of October 31, 1992. The claim was "for the establishment of medical liability only." While the claim was still pending, on March 12, 1996, the employee died. On March 13, 1997, the surviving spouse of the employee, Vivian Brown, filed a claim petition for dependency benefits. The petition indicated that the employee had died as a result of an occupational disease in the nature of "adenocarcinoma of the lung." A claim was made that hospital and medical expenses were made necessary by the employee's disease, but that the sum of the expenses was unknown at that time.

In an order, served and filed April 3, 1997, Compensation Judge Ronald Erickson at the Office of Administrative Hearings (OAH) consolidated the October 19, 1995 claim petition

and the 1997 claim petition for dependency benefits. On December 15, 1997, HRI filed a motion to intervene, claiming that it had paid certain medical benefits on behalf of the employee in the sum of \$35,677.92 as a result of the illness or injury which the employee had claimed was compensable under the workers' compensation laws of Minnesota. By order of December 30, 1997, the compensation judge granted HRI's intervention.

The claims by the employee's surviving spouse were settled in the latter part of December 1998 with a lump sum payment by the self-insured employer and CNA Insurance Company of \$67,500.00.¹ The stipulation indicated that \$7,500.00 of the settlement is for reimbursement for funeral expenses. The parties acknowledged that HRI had intervened in the proceeding for reimbursement of medical expenses paid on behalf of the employee in the approximate amount of \$35,677.92. It recognized that the intervention interest of HRI was the subject of a Parker/Lindberg proceeding² at OAH between the self-insured employer and the intervenor. As a result, the stipulation provided that the self-insured employer would hold Ms. Brown and CNA Insurance Company harmless from any and all claims relating to the intervention interest. The settlement was approved by an award on stipulation served and filed December 30, 1998.

The dispute between the intervenor and the self-insured employer came on for hearing before Compensation Judge Kelly at OAH on December 9, 1998. Prior to the hearing the parties had agreed that the only issue before the compensation judge would be whether the intervenor had standing to pursue reimbursement for payment of medical expenses. The parties had agreed that if the intervenor had standing that the self-insured employer would pay reimbursement in the amount of \$17,500.00. The compensation judge determined that the intervenor did have standing to intervene and the self-insured employer appeals from that determination.

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

¹ CNA provided workers' compensation insurance coverage to the employer from January 1, 1942 through January 1, 1958. CNA contributed \$7,500.00 to the settlement of the dependency claim with the employee's surviving spouse. (Stipulation for Settlement, 12/28/98.)

² See Parker/Lindberg v. Friendship Village, 395 N.W.2d 713, 39 W.C.D. 125 (Minn. 1986).

In determining that the intervenor had standing, the compensation judge made the following observations in his memorandum:

However, the undersigned Compensation Judge offers a simple analysis. Substance over form. The employer is responsible for medical expenses for compensable personal injuries. Petitioner has commenced a proceeding to establish a compensable personal injury. Intervenor has paid medical expense and has no independent right to commence a proceeding to establish a compensable personal injury. Intervenor may lose or gain by an order or decision of the proceeding commenced by Petitioner to establish a compensable personal injury. Therefore, intervenor has standing in the proceeding commenced by the filing of a Claim Petition for Dependency Benefits.

On appeal, both parties divide their argument into whether the intervenor had standing to intervene in the proceeding commenced by either (1) the 1995 claim petition to establish medical liability or (2) the 1997 claim petition for dependency benefits.

Standing Based on October 1995 Claim Petition

Minn. Stat. § 176.361, subd. 1, provides that:

A person who has an interest in any matter before the workers' compensation court of appeals, or commissioner, or compensation judge such that the person may either gain or lose by an order or decision may intervene in the proceeding by filing an application in writing stating the facts which show the interest. . . .

On appeal, the self-insured employer argues that the intervenor in this case has no interest in the claim petition that was filed by the employee in October of 1995 because the employee's claim for medical expenses did not survive his death. The self-insured employer points out that the intervenor had not filed its motion for intervention until December 1997, well after the employee's death in March of 1996.

We reject the self-insured employer's argument. Pursuant to Minn. Stat. § 176.135 the employer has an obligation to pay for all medical expenses incurred which were causally related to the work injury. Pursuant to Minn. Stat. § 176.191 should a healthcare provider or healthcare insurer make payment of the expenses that would otherwise be the obligation of the employer or its insurer, the workers' compensation carrier's liability is primary and it should, upon proper intervention in a workers' compensation proceeding, make reimbursement to the healthcare provider or insurer. We agree with the intervenor that the medical expense claims survive the death of the employee. Clearly, had the employee been uninsured the employee's estate would have been able to assert a claim for payment of these expenses after the death of the employee.

We reject the self-insured employer's argument that a specific provision authorizing the survivability of the clearly enunciated obligation to pay medical expenses is required. The obligation to pay for the medical expenses incurred on behalf of the employee is protected in section 176.135 and need not be referenced in section 176.021 to survive the employee's death. Minn. Stat. § 176.021, subd. 3.

Intervention Rights Under a Dependency Claim

As we have determined that the intervenor has standing to intervene in the proceeding related to the original claim petition filed by the employee in October of 1995 it is unnecessary for us to resolve the question of whether the intervenor also had standing to make a claim in the proceeding related to the surviving spouse's claim petition for dependency benefits.

As a result, the compensation judge's finding that HRI had standing to intervene in the proceeding which involved the consolidation of the employee's October 1995 claim petition and the dependency claim petition filed in 1997 is hereby affirmed.