AURELIO GONZALEZ, Employee/Appellant, v. MIDWEST STAFFING GRP., INC., and AM. COMP. INS. by RTW, INC., Employer-Insurer, and ALLINA HEALTH SYS. d/b/a UNITED HOSP., Intervenor/Cross-Appellant.

WORKERS' COMPENSATION COURT OF APPEALS
APRIL 6, 1999

No. [REDACTED SSN]

HEADNOTES

EXCLUSIONS FROM COVERAGE - ALIENS; STATUTES CONSTRUED - MINN. STAT. § 176.011, SUBD. 9. The compensation judge erred as a matter of law in concluding that the petitioner did not qualify as an "employee" under Minn. Stat. § 176.011, subd. 9, because of his status as an undocumented alien.

Reversed.

Determined *en banc*.
Compensation Judge: Paul V. Rieke.

OPINION

DEBRA A. WILSON, Judge

The employee and the intervenor, Allina Health Systems, appeal from the compensation judge's decision that Aurelio Gonzalez is not eligible for benefits under the Minnesota workers' compensation statutes because he is an undocumented alien. We reverse.

BACKGROUND

Aurelio Gonzalez [Gonzalez] is an undocumented alien who does not possess a valid social security card or resident alien card. He entered the United States in 1997 and eventually purchased a social security card and resident alien card, knowing that they were counterfeit.

Gonzalez applied for work at Midwest Staffing Group, Inc.[the employer], on November 12, 1997, and presented the false social security card and resident alien card, knowing that he could not obtain employment without them. The employer relied on Gonzalez's documents and would not have hired him if it had been aware that he was an undocumented alien.

Gonzalez was subsequently assigned to work at Tilsner Carton. On March 30, 1998, Gonzalez sustained a work-related injury to his left upper extremity, and, as a result of that injury, he received reasonable and necessary medical care and treatment from various medical

providers. He has been off work since March 30, 1998, and was released to one-handed, light-duty work effective July 13, 1998. The United States Immigration and Naturalization Service was advised of Gonzalez's background, but, as of the fall of 1998, no action had been commenced.

Gonzalez filed a claim petition seeking temporary total disability benefits, medical expenses, and penalties as a result of the March 30, 1998, injury. In their answer, the employer and insurer alleged that Gonzalez's claim for benefits was barred by reason of his fraud/misrepresentation in the employment application process and by reason of the fact that Gonzalez is an illegal alien. On September 9, 1998, Allina Health System was allowed to intervene in the matter for the more than $29,000 in medical benefits paid on behalf of Gonzalez.

The matter proceeded to hearing before a compensation judge at the Office of Administrative Hearings on stipulated facts and briefs. In a decision filed on November 16, 1998, the compensation judge listed only one issue: "Whether Aurelio Gonzalez is eligible to receive Minnesota workers' compensation benefits. Is an undocumented alien who sustains a work related injury eligible for benefits under the Minnesota Workers' Compensation Act."[1] The judge resolved the issue in the employer and insurer's favor, and Gonzalez and the intervenor 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

In Minn. Stat. § 176.011, subd. 9, an "employee" is defined as "any person who performs services for another for hire." However, the compensation judge accepted the employer and insurer's argument that, because Minn. Stat.§ 176.011, subd. 9(1), specifically includes "an alien" as a covered employee but does not specifically include "undocumented aliens," then "undocumented aliens" must be excluded from coverage. In support of this contention, the employer and insurer cite the case of Kelsey v. State Farm Mut. Auto. Ins. Co., 365 N.W.2d 795 (Minn. App. 1985), which relied, in part, on the principle of statutory construction indicating that "the expression of one thing is the exclusion of another." Id. at 797.[2] We are not persuaded by the employer and insurer's argument.

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[1] At oral argument, counsel for the employee clarified that claims for specific workers' compensation benefits were to be litigated at a later date.

[2] Kelsey involved interpretation of Minn. Stat. § 65B.47, subd. 2 (1984), a no-fault statute concerning injury to "an employee, or to his spouse *or other relative residing in the same household.*" Minn. Stat. § 65B.47, subd. 2. The court in Kelsey concluded that "[t]he legislature by expressly including relatives residing in the same household within the scope of coverage in

Minn. Stat.§ 176.011, subd. 9, reads, " 'Employee' means any person who performs services for another for hire including the following:" (emphasis added), and the statute then lists twenty-three specific kinds of employees, of which alien is one. The meaning of the word "including" was discussed in Lowry v. City of Mankato, 231 Minn. 108, 42 N.W.2d 553 (1950), where the Minnesota Supreme Court stated:

> The word "including" has a variable meaning, depending on the circumstances of its use. Sometimes it is a word of enlargement and at others one of restriction. Sometimes it is used as meaning "also," "as well as," and "for example." It is used sometimes to specify particularly that which belongs to a class already mentioned in more general terms; to add to a class a genus not naturally belonging thereto . . . .

Id. at 115, 42 N.W.2d at 559.

As we interpret it, the language "including the following" as used in Minn. Stat. § 176.011, subd. 9, means "for example" and should not be construed to exclude classifications not itemized. Our conclusion on this point is based in part on the fact that Minn. Stat. § 176.011, subd. 9(a), specifically excludes certain workers from the definition of employee but does not list undocumented aliens as one of those exclusions.

The compensation judge also accepted the employer and insurer's argument that Gonzalez cannot be considered an employee for workers' compensation purposes because he may not lawfully be re-employed in this country. That is, he cannot make a reasonably diligent search for work and the employer cannot offer him suitable gainful employment. Again, we disagree with this analysis. While the employer and insurer may certainly raise these points as defenses to an employee's claims for wage loss benefits, these issues have no bearing on the question of whether an individual may qualify as an "employee" in the first place.

The compensation judge further accepted the employer and insurer's contention that, because the misrepresentations by Gonzalez resulted in a hiring that was in direct violation of federal law, the contractual relationship should not be recognized or enforced by law. Again, we are not convinced. While Gonzalez's misrepresentation may have been a violation of federal law, and while there may be federal repercussions for that misrepresentation, including criminal penalties and deportation, there is nothing in the workers' compensation statute that disqualifies Gonzalez from receiving workers' compensation benefits because he was an undocumented alien. To the contrary, Minn. Stat. § 176.021, subd. 1, provides that "except as excluded by this chapter all employers and employees are subject to the provisions of this chapter."

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subdivision 2, can be assumed to be excluding other relatives." Kelsey, 365 N.W.2d at 797.

The employer and insurer also refer to Granados v. Windson, 24 Va. App. 80, 480 S.E.2d 150 (1997), in support of their position that Gonzalez is not eligible to receive workers' compensation benefits because he made misrepresentations as to his eligibility for employment and entered into an illegal contract of hire. However, the first Granados decision, which contains this analysis, was subsequently withdrawn upon rehearing, and the lower court's decision was affirmed, by operation of law, because the appellate court was evenly divided on the question. Granados v. Windson, 26 Va. App. 251, 494 S.E.2d 162 (1997). The validity of the analysis in the first decision is therefore questionable at best.

According to Professor Arthur Larson, "illegal entry into this country does not deprive an alien of compensation rights." 2 A. Larson, The Law of Workers' Compensation § 35.20. His treatise cites cases in Florida, New Jersey, New York, and Oklahoma that have held that illegal aliens with work-related injuries are not barred from receiving workers' compensation benefits.[3] Given Minnesota's definition of employee, as contained in Minn. Stat. § 176.011, subd. 9, and given the lack of specific language excluding undocumented aliens from that definition, we will not carve out an exception to coverage that does not now exist. Any such decision is for the legislature. We reverse, therefore, the compensation judge's decision and hold that Gonzales is an employee under Minnesota workers' compensation statutes for purposes of eligibility for workers' compensation benefits as a result of his March 30, 1998, work injury.

[3] Cenvill Development Corp. v. Candelo, 478 So.2d 1168 (Fla. App. 1985); Fernandez-Lopez v. Jose Cervino, Inc., 288 N.J. Super. 14, 671 A.2d 1051 (App. Div. 1996); Mendoza v. Monmouth Recycling Corp., 288 N.J. Super. 240, 672 A.2d 221 (App. Div. 1996); Testa v. Sorrento Restaurant, Inc., 10 A.D.2d 133, 197 N.Y.S.2d 560 (1960); and Lang v. Landeros, 918 P.2d 404 (Okla. Ct. App. 1996).