GREGORY J. MEYER, Employee, v. ULTRA PAINTING & PAPER HANGING CO., INC., and AUTO-OWNERS INS. CO., Employer-Insurer/Appellants.

WORKERS' COMPENSATION COURT OF APPEALS
MARCH 11, 1999

No. [REDACTED SSN]

HEADNOTES

APPEALS - INTERLOCUTORY ORDER. An order denying joinder of an additional employer and insurer is not a final or appealable order affecting the merits of the case and this court does not have jurisdiction over an appeal of such an order.

Dismissed.

Determined by Wheeler, C.J., Johnson, J., and Hefte, J.
Compensation Judge: Karen C. Shimon.

OPINION

STEVEN D. WHEELER, Judge

The employer and insurer appeal from the compensation judge's order denying its motion for joinder of an additional employer and insurer.

BACKGROUND

As there is no record before the court, except for filings contained in the judgment roll, for purposes of this decision we will rely on the statement of facts contained in the appellants' brief. The employee, Gregory J. Meyer, began employment with Ultra Painting & Decorating Company during the month of March 1998. Mr. Meyer worked primarily as a paper hanger on a job site at the Holiday Inn in St. Paul. According to his deposition testimony his job was to apply the paper against the wall and smooth it out using a 14-inch piece of plastic.

On or about April 27, 1998, the employee went to the Bloomington-Lake Clinic where he was seen by Dr. Ahmed Dajani. He gave a history to Dr. Dajani that he had pain in his right thumb which had been present for several days. The employee attributed some of his pain to his work activity which was described as hanging "a lot" of vinyl wallpaper during which activity he had to hold a "smoother" and work very rapidly. Dr. Dajani's diagnosis was a right trigger thumb and suggested ice application and some medication for approximately three weeks. The employee continued working, apparently without loss of time, until approximately May 14, 1998, when the employer, Ultra, took all employees off the job as a result of its claim that Holiday Inn had failed to make payment on the contract. Holiday Inn then hired all of the employees of

Ultra on or about May 15 or 16, 1998 to finish the job on the particular floor they were working on. The employee continued to perform the same functions that he had performed for Ultra and was paid through June 14, 1998. He received no medical treatment for his right thumb during the time period that he worked directly for Holiday Inn.

Following his last day of work on June 14, 1998, the employee took a week's vacation, fishing at a friend's cabin. Upon his return from vacation he went to see Dr. Dajani on June 22, 1998 with complaints of pain related to his thumb. He was referred to Dr. Mark Sigmond, an orthopedic surgeon, for further treatment and examination. Dr. Sigmond saw the employee on June 23, 1998, at which time the employee complained of his right thumb locking in position on flexion, with painful motion. The employee underwent surgery on his right thumb on June 26, 1998, performed by Dr. Sigmond. As a result of the surgery the employee had significant relief and was released to full employment with no restrictions and no permanent partial disability as of August 4, 1998. Dr. Sigmond also indicated that the employee had reached maximum medical improvement as of that date.

On August 3, 1998, the employee had filed a claim petition only against Ultra Painting, alleging an injury on April 27, 1998. The employee sought temporary total disability from June 14, 1998 to the present and continuing, permanent partial disability "to be determined" and payment of medical and rehabilitation benefits. The employee apparently filed an affidavit of significant financial hardship at the same time he filed his claim petition. On August 13, 1998, the employer and insurer answered the employee's claim petition and objected to the affidavit of financial hardship and requested an independent medical examination and noticed the taking of the employee's deposition. The employee's deposition was taken on August 20, 1998, and he was examined by Dr. William Call on August 28, 1998. As a result of the deposition and the adverse examination, the employer and insurer learned that the employee had been working for Holiday Inn from May 15 through June 14, 1998.

On September 1, 1998, the employer and insurer filed a motion for joinder of additional parties, specifically Holiday Inn and its insurer. The employee filed an objection to the motion for joinder on September 23, 1998, primarily on the basis that there was no factual basis to make a claim against Holiday Inn and all liability should be on Ultra. The matter of the employee's request for an expedited hearing due to financial hardship was apparently heard before Compensation Judge Karen C. Shimon on September 23, 1998. At that time, according to the employer and insurer's brief, Judge Shimon indicated that she was also going to address the employer and insurer's motion for joinder of Holiday Inn. According to the employer and insurer, Judge Shimon indicated that she was going to deny the motion for joinder because she was going to grant the motion for an expedited hardship hearing and joinder of additional parties would delay the process. On October 6, 1998, the employer and insurer filed an appeal with this court from the order denying the motion for joinder of additional parties, which had been served and filed September 25, 1998.

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 first issue to be resolved is whether the order issued by Compensation Judge Shimon was an appealable order such that this court would have jurisdiction to resolve the merits of the employer and insurer's position concerning joinder.

The statutory authority for appeal to the Workers' Compensation Court of Appeals are found generally in Minn. Stat. § 176.421. A party may appeal to the court from "an award or disallowance of compensation, or other order affecting the merits of the case." Minn. Stat. § 176.421, subd. 1. Orders which do not affect the merits of the case, or prevent a later determination of 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). It has long been the rule in this state that an order either granting or denying joinder is a nonappealable order, neither constituting a final determination of the rights of the parties on the merits nor decisive of any substantive or ultimate rights of the litigants. Mayer v. Bauer Floor Covering, 42 W.C.D. 1024 (W.C.C.A. 1990). While we are sympathetic to the concerns of the employer and insurer, and understand their desire to have all issues resolved at one time, their rights to seek indemnification or contribution from another employer who may be responsible for some or all of any liability that may be found against it are not precluded by the compensation judge's order. As a result we dismiss the employer and insurer's appeal.