

KIMBERLY S. NEWSTRAND, Employee, v. ANDERSON FABRICS and ST. PAUL FIRE & MARINE INS. CO., Employer-Insurer, and N. STAR HOMES and MINN. ASSIGNED RISK PLAN adm'd by WAUSAU INS. CO., Employer-Insurer, and AM. LINEN and CNA INS. CO., Employer-Insurer, and GRAND FORKS CLINIC, MEDICA/HRI, and N. COUNTRY REGIONAL HOSP., Intervenors, and MN DEP'T OF EC. SEC./RI, Petitioner.

WORKERS' COMPENSATION COURT OF APPEALS  
APRIL 21, 1999

No. [REDACTED SSN]

HEADNOTES

VACATION OF AWARD - STANDING. Where the petitioner was not a party to the stipulation for settlement, the petitioner lacks standing to request vacation of the award on stipulation.

INTERVENORS. Where the parties failed to give notice to the petitioner, State of Minnesota, Department of Economic Security, excluding the department from settlement negotiations, the department is entitled to full reimbursement of its claim pursuant to Brooks v. A.M.F., Inc., 278 N.W.2d 310, 31 W.C.D. 521 (Minn. 1979). The matter is continued to allow supplemental briefs with respect to the party liable for payment.

Petition to vacate award on stipulation dismissed.  
Petition to intervene granted.

Determined by Hefte, J., Johnson, J., and Wheeler, J.

OPINION

RICHARD C. HEFTE, Judge

The State of Minnesota, Department of Economic Security, as a potential intervenor, petitions to vacate a stipulation in the above-entitled matter, filed May 22, 1998, on the grounds that the employee had been paid certain amounts of reemployment insurance (unemployment) benefits prior to and as of the date the stipulation was signed and an award on stipulation was issued. The State of Minnesota, Department of Economic Security, was not a party to said stipulation and was not served with a notice of their potential right to intervene in the above-entitled matter at any time herein prior to the filing of the stipulation and award on stipulation. The Petition to vacate is dismissed.

BACKGROUND

Kimberly S. Newstrand (employee) claimed she sustained injuries to her right and left upper extremity arising out of and in the course and scope of her employment with the

employers herein, Anderson Fabrics, North Star Homes and American Linen. These injuries were claimed to have occurred during a period extending from April 1991 to May 1994.

On April 24, 1995, the employee filed a claim petition alleging entitlement to workers' compensation benefits related to carpal tunnel injuries sustained at work. The claim petition requested payment for medical costs and rehabilitation benefits, but did not include a claim for temporary total or temporary partial disability benefits. Orders were served and filed granting intervention to three intervenors: the Grand Forks Clinic, Medica/HRI, and North County Regional Hospital. The employee also sent an intervention notice to the State of Minnesota, Department of Human Services, as a potential intervenor.<sup>1</sup> Settlement conferences were scheduled for October 4, 1995, May 7, 1996, and December 18, 1996; and a pretrial conference was scheduled for May 12, 1997. A hearing, scheduled for June 3, 1997, was continued as a result of the employee's medical complications. A second pretrial conference was held on November 17, 1997.

Prior to the hearing in this matter, a settlement agreement was reached between the employee, the employers and insurers, and the medical intervenors. The executed settlement agreement was filed May 22, 1998 and included the statement that the settlement was a full, final, and complete settlement of any and all claims including claims for temporary total disability benefits, related to the injuries the employee suffered at the employers with the exception that medical benefits related to the employee's right wrist and hand were left open as against employers Anderson Fabrics and North Star Homes. The State of Minnesota, Department of Economic Security, Reemployment Insurance Division (the Department) did not participate in the settlement negotiations and was not a party to the settlement herein. Notice of the right to petition to intervene was not served on the Department. The Department did not intervene in this matter, claiming they were not aware of the employee's claim and settlement until June 29, 1998. The stipulation for settlement contained a provision settling the claims of the three specific medical intervenors. In the stipulation, the employee stated that there were "no additional potential intervenors that have an interest in this case." The stipulation went on to say that the employee agreed to indemnify the employer and insurers for "all intervention claims asserted after the date of the award."

An award on stipulation was served and filed on May 27, 1998. The Department received a copy of the award on June 29, 1998. On July 8, 1998, the Department notified the employee's attorney of its intervention claim for unemployment compensation benefits paid to the employee for the certain periods of time between November 3, 1996 and July 18, 1998. The Department also requested reimbursement from the employee for the benefits paid to the employee by the Department. (Affidavit of Richard H. Rhode.) Having not been reimbursed by the employee, the Department filed a Petition to Vacate the Stipulation executed by the employee, the employers and insurers, and the intervenors, which was approved by an Award on Stipulation.

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<sup>1</sup> We find no evidence the Department of Human Services paid any benefits to or on behalf of the employee.

## DECISION

### Petition to Vacate

There is no dispute as to the relevant facts. The State of Minnesota, Department of Economic Security, was never given the statutory notice of their potential right to intervene. Thus the Department could not participate in the settlement negotiations, and was not a party to the settlement agreement, dated May 22, 1998. The Department was apparently unaware of the stipulation for settlement and the award on stipulation until June 29, 1998. On July 8, 1998, the Department advised the employee's attorney that the Department had paid reemployment insurance (unemployment) benefits to the employee prior to and through the date of the stipulation for settlement and award. The Department requested reimbursement from the employee of the benefits paid through the date of the award, less an attorney's fee in accord with Edquist v. Browning-Ferris, Inc., 380 N.W.2d 597, 38 W.C.D. 41 (Minn. 1986).

Receiving no reply to their letter advising the employee and her attorney of their potential interest in this matter, and to their demand for payment from the employee as provided in the stipulation, the Department on September 9, 1998 filed a petition to vacate the stipulation for settlement in this matter. The employee argues that in her claim petition she made no claim for temporary total disability benefits or temporary partial disability benefits and that her claims were for medical and rehabilitation benefits only. The employee's position is apparently that she neither claimed nor received benefits from which the Department could be reimbursed for the unemployment benefits paid the employee, and therefore, the Department has no intervention interest in this case and no notice was required. We reject this argument.

An action for workers' compensation benefits may only be initiated by an employee. Once that action has been initiated, potential intervenors whose interest may be affected then could have a claim and may move to intervene in the action. Freeman v. Armour Food Co., 380 N.W.2d 816, 38 W.C.D. 445 (Minn. 1986). The Department was not notified that it had a potential intervention interest until after the stipulation for settlement and award approving the settlement were served and filed. The Department, as a potential intervenor, was not a party to the settlement, and is not bound by the terms of the settlement. Its claims cannot be foreclosed or prejudiced by a settlement to which it was not a party.

The Department does not assert any of the statutory grounds for vacation of an award under Minn. Stat. § 176.461 here exist. Rather, the Department petitioned to vacate the settlement solely to allow consideration of its intervention claim. We conclude it is not necessary to vacate the settlement to consider the Department's intervention claim. See Burdick v. Inver Grove Ford, 55 W.C.D. 195 (W.C.C.A. 1996), summarily aff'd (Minn. September 24, 1996). Accordingly, the petition to vacate is dismissed.

### Department's Intervention Claim

Any person who may gain or lose by an order or decision of a compensation judge

may move to intervene in the proceeding. Minn. Stat. § 176.361, subd. 1. A potential intervenor without knowledge of a pending workers' compensation proceeding cannot be expected to move to intervene until it receives notice of a proceeding as required by Minn. R. 1415.1100. The employee's attorney was obligated to ask his client "whether a third party, other than the workers' compensation insurer, has paid monetary benefits or treatment expense to the employee or on the employee's behalf." Minn. R. 1415.1100, subp. 1. "If inquiry discloses that a third party has made a payment, the attorney discovering that fact then has the duty to promptly place the third party on written notice of its right to petition for intervention and reimbursement." Minn. R. 1415.1100, subp. 2. These rules are clear and unambiguous. As the Department had made payments to the employee, notice became mandatory whether or not the Department had a valid claim for reimbursement or a party had a legitimate defense to the Department's claim.

There is apparently no dispute the State of Minnesota, Department of Economic Security, was not provided notice of its right to intervene in this case. As a result, the Department was not included in the settlement negotiations and was not a party to the stipulation for settlement. An intervenor which is excluded from settlement negotiations and is not a party to the stipulation is entitled to full reimbursement. Brooks v. A.M.F., Inc., 278 N.W.2d 310, 31 W.C.D. 521 (Minn. 1979). The employee here contends, however, she made no claim for workers' compensation benefits during any period of time for which she received reemployment compensation benefits from the Department.<sup>2</sup> Accordingly, the employee contends the Department has no intervention interest since there was no period of overlapping liability for workers' compensation and re-employment benefits. In essence, the employee argues that since the employee no longer has any incentive to pursue her claim for wage loss benefits, it is the Department's obligation to prove that the period of disability for which it paid re-employment benefits was work-related. This argument is contrary to the principle established in Brooks, that "to leave an intervenor, who is excluded from participating in settlement negotiations and from the proceedings resulting in approval of a full, final and complete settlement by the division, with no remedy other than to thereafter undertake the burden of proving that the injury was work-related is not the type of protection which strikes a proper balance of the interests of all parties concerned." Further, such a result would encourage parties to settle the employee's claim without notifying the intervenor "who is then left with the option of litigating work-relatedness or waiving its right to any reimbursement." Brooks, 278 N.W.2d at 315, 31 W.C.D. at 531. We conclude, pursuant to Brooks, the Department is entitled to full reimbursement of its intervention claim. See Braun v. PPG Indus., 48 W.C.D. 502 (W.C.C.A. 1993).

The next question before the court is which party or parties are primarily liable to repay the intervention interest to the Department. Since none of the parties or the Department dealt with this issue in their briefs, we conclude any interested party should be given the opportunity to file a supplemental brief. Accordingly, it is hereby ORDERED:

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<sup>2</sup> In the stipulation for settlement, the employee claimed "she may be entitled to retraining and other rehabilitation and wage loss benefits as a result of her injury." The employee then settled all claims for wage loss benefits, to which she might be entitled as a result of her injuries.

1. The State of Minnesota, Department of Economic Security is hereby joined as an intervenor.
2. Any party may, within 30 days of the date of this decision, file a brief with the court.
3. 30 days from the date of this decision, this case shall be reassigned to a panel of this court for further consideration.