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, N. COUNTRY REG'L HOSP. and MN DEP'T OF ECON. SEC., REEMPLOYMENT INS. DIV., Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS
JULY 8, 1999

No. [REDACTED SSN]

HEADNOTES

INTERVENORS; SETTLEMENT. The employers and insurers are required to pay the claim of the excluded intervenor pursuant to Brooks v. A.M.F., Inc., 278 N.W.2d 310, 31 W.C.D. 521 (Minn. 1979).

Order entered requiring partial reimbursement of intervenor's claim.

Determined By: Johnson, J., Wilson, J., and Wheeler, C.J.

OPINION

THOMAS L. JOHNSON, Judge

On April 24, 1995, Kimberly S. Newstrand filed a claim petition alleging entitlement to workers' compensation benefits related to carpal tunnel injuries sustained at work. The employee alleged injuries to her right and left upper extremity arising out of and in the course of her employment with the employers, Anderson Fabrics, North Star Homes and American Linen, during a period extending from April 1991 to May 1994. The employee sought payment for medical costs and rehabilitation benefits, but did not allege entitlement to 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.[1] 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 and the case was set for hearing on December 11, 1997.

[1] We find no evidence the Department of Human Services paid any benefits to or on behalf of the employee and Human Services did not intervene.

The employee filed a claim for unemployment compensation benefits effective November 3, 1996. The State of Minnesota, Department of Economic Security, Reemployment Insurance Division (the Department) paid benefits to the employee from November 3, 1996 through March 8, 1997 and from August 31, 1997 through October 11, 1997 in the amount of $5,842.00. The employee filed an additional claim effective January 25, 1998 and the Department paid unemployment compensation benefits to the employee from January 25, 1998 through July 18, 1998 in the amount of $3,379.00. (Affidavit of Richard H. Rhode.)

Prior to the scheduled hearing, the employee, the employers and insurers, and the medical intervenors reached a settlement. A stipulation for settlement filed May 22, 1998 stated the settlement was a full, final, and complete settlement of all the employee's claims, including claims for temporary total disability benefits, related to the injuries the employee suffered at the employers. Medical benefits related to the employee's right wrist and hand were left open as against Anderson Fabrics and North Star Homes. The stipulation for settlement contained a provision settling the claims of the three specific medical intervenors. Notice of the right to petition to intervene was not served on the Department and the Department did not intervene. The Department did not participate in the settlement negotiations and was not a party to the settlement agreement. In the stipulation, the employee stated that there were "no additional potential intervenors that have an interest in this case" and 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 between November 3, 1996 and July 18, 1998. The Department further requested reimbursement from the employee for the benefits paid to the employee by the Department. (Affidavit of Richard H. Rhode.) The Department received no reply from the employee. On September 9, 1998, the Department filed a Petition to Vacate the Award on Stipulation, filed May 27, 1998.

In a decision filed April 21, 1999, this court dismissed the Department's petition to vacate and joined the Department as an intervenor. The court further concluded the Department was entitled to reimbursement of its intervention claim pursuant to Brooks v. A.M.F., Inc., 278 N.W.2d 310, 31 W.C.D. 521 (Minn. 1979). Finally, the court allowed the parties to submit supplemental briefs on the issue of which party or parties are primarily liable to pay the intervention claim of the Department. The employee, Anderson Fabrics and North Star Homes filed a supplemental brief.

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 employee, in her supplemental brief, again argues that since she asserted no claim for wage loss benefits, she was not obligated to place the Department on notice of its right to intervene. We again reject that argument. Minn. R. 1415.1100 is clear and unambiguous.[2] The Department paid benefits to the employee and was entitled to notice whether or not the employee asserted a claim for wage loss benefits. An intervenor must be a participant in the settlement negotiations to "enable the intervenor at least to evaluate the employee's and employer-insurer's appraisal and then to determine whether to join with the employee in also compromising its claim or to pursue full reimbursement by a trial on the merits." Brooks at 315, 31 W.C.D. at 532. To hold otherwise, would encourage parties to settle the employee's claim without notifying potential intervenors. Such a result is contrary to the principle established in Brooks.

The employee received a second period of unemployment compensation benefits commencing January 25, 1998. The employee contends the parties settled the case on December 10, 1997, the day before the scheduled hearing. Accordingly, the employee argues, no party should be responsible to repay the Department for this second period of benefits since the payment of those benefits occurred after the date of the settlement agreement. Again, we disagree. A settlement is not effective or binding until an award on stipulation is filed. Alvord v. Hoffman Engineering Co., 55 W.C.D. 47 (W.C.C.A. 1996), summarily aff'd (Minn. July 18, 1996); Minn. Stat. § 176.521, subd. 1. The award on stipulation was not filed until May 27, 1998. Therefore, the settlement was not effective until that date. Accordingly, the Department's intervention claim from January 25, 1998 through May 27, 1998 is valid.

Anderson Fabrics and North Star Homes assert that, despite proper inquiry, the employee failed to tell them she had received and was receiving unemployment compensation benefits. The respondents contend they did all they could do to determine the existence of potential intervenors and were never aware that the employee received unemployment compensation benefits until after the award on stipulation. Based on the exhibits to North Star's brief, that appears to be the case.[3] The employee was obligated to advise the respondents and the

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[2] Minn. R. 1415.1100, subp. 1, required the employee's counsel to ask his client "whether a third party, other than the workers' compensation insurer, has paid monetary benefits or treatment expenses to the employee or on the employee's behalf." "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.

[3] On July 27, 1995, counsel for North Star served a discovery request on the employee's attorney pursuant to Minn. R. 1415.2200. The employee was asked to state whether she had received benefits from any organization which might be entitled to intervene. The discovery request was continuing in nature and stated the employee was required to respond if she received such benefits in the future. (Ex. B.) By response dated August 28, 1995, the employee stated there were no intervenors at that time, but "potential intervenors will be put on notice as they

Department of the potential intervention claim. Her failure to do so should not, the employers contend, subject them to liability to the Department. Rather, they assert the employee should be liable to the Department to repay the reimbursement claim.

In Burdick v. Inver Grove Ford, 55 W.C.D. 195 (W.C.C.A. 1996), summarily aff'd (Minn. Sept. 24, 1996), the court ordered the employer and insurer to reimburse medical and wage loss benefits paid to the employee by the no-fault insurance carrier because the no-fault carrier was not notified of its intervention right and was excluded from the settlement negotiations. In Le v. Kurt Mfg. Co., 557 N.W.2d 202, 55 W.C.D. 650 (Minn. 1996), the supreme court affirmed this court's order that the employer and insurer reimburse the disability benefits paid to the employee by an intervenor which was excluded from the settlement negotiations. See also Stage v. Lions Tap, Inc., 55 W.C.D. 208 (1996). In each of the cited cases, it appears the employee and the employer and insurer, although aware of the potential claim of the third party intervenor, chose to proceed with the settlement without giving notice to the intervenor or including them in the settlement negotiations. In this case, apparently only the employee had knowledge of the Department's intervention interest. We do not agree, however, this is a significant distinction or warrants a different result in this case.

The employers and insurers argue they have "clean hands" and the fault here lies with the employee. Accordingly, respondents argue equity dictates that the employee rather than the employers and insurers should bear the burden of reimbursing the Department. Although this argument has some merit, the Department is similarly without fault in this matter. Under Brooks, the Department is entitled to reimbursement and the relative degree of fault of the parties is immaterial. A stipulation for settlement between the employee and the employer and insurer does not alter the right of an intervenor, not a party to the settlement, to seek reimbursement.

Whether the employee has the financial resources to reimburse the Department is problematical. As a matter of policy, the burden of economic losses in work-related injuries must be placed on the industry and not on a health or disability insurer. See Johnson v. Blue Cross & Blue Shield, 329 N.W.2d 49 (Minn. 1983). We believe this policy consideration applies equally to the Department of Economic Security. We conclude that objective is best served in this case by requiring the employers and insurers to pay the reimbursement claim of the Department for the unemployment benefits paid to the employee from November 3, 1997 through May 27, 1998.[4]

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become know [sic] and copies of the same will be forwarded to your office." (Ex C.) In a pre-trial statement dated January 24, 1997, the employee did not identify the Department as a potential intervenor. In the stipulation for settlement, the employee denied there were any potential intervenors other than the named medical providers.

[4] In the settlement agreement, the employee agreed to indemnify the employer and insurers for all intervention claims asserted after the date of the award. The employers and insurers may have a claim against the employee under the indemnity agreement for the reimbursement paid by them to the Department.

The settlement agreement apportioned liability approximately 70 percent to Anderson Fabrics/St. Paul Fire & Marine Insurance Company and 30 percent to North Star Homes/Assigned Risk Plan. These two employers/insurers shall reimburse the Department, in that ratio.