

JAMES SCHMITT, Employee, v. UNIV. OF MINN., SELF-INSURED, Employer/Appellant.

WORKERS' COMPENSATION COURT OF APPEALS
OCTOBER 6, 1999

No. [REDACTED SSN]

HEADNOTES

PRACTICE & PROCEDURE - DISMISSAL; PRACTICE & PROCEDURE - EXPEDITED HEARING. An adjudication of the "issues raised" in an employer's Petition for Discontinuance as of the date of that petition is not inappropriate for lack of ripeness even if it comes on for hearing after benefits are no longer being paid.

Reversed and remanded.

Determined by: Pederson, J., Johnson, J., and Wilson, J.
Compensation Judge: Donald C. Erickson

OPINION

WILLIAM R. PEDERSON, Judge

The self-insured employer appeals from the compensation judge's dismissal without prejudice of the employer's Petition to Discontinue benefits filed July 24, 1998. We reverse and remand for consideration of the Petition on its merits.

BACKGROUND

On November 7, 1997, James Schmitt sustained a soft tissue injury to his back in the course of his work as an animal handler and feeder for the University of Minnesota. On the date of his injury, Mr. Schmitt [the employee] was thirty-one years old and was earning a weekly wage of \$506.80. The University of Minnesota [the employer], self-insured against workers' compensation liability, accepted primary liability for the injury and commenced payment of wage replacement and medical benefits. On May 12, 1998, at the request of the employer, the employee underwent an independent medical examination by Dr. Paul Yellin, who concluded that the employee was at maximum medical improvement [MMI] and was no longer restricted by his work injury or in need of any further treatment. On May 29, 1998, the employer filed a Notice of Intention to Discontinue [NOID] payment of the employee's temporary total disability benefits, based on the report of Dr. Yellin. The employee requested an administrative conference, which was held on June 22, 1998, at the Settlement Division of the Office of Administrative Hearings. By an order filed June 25, 1998, the compensation judge at that proceeding denied the employer's request to discontinue payment of benefits. On July 24, 1998, the employer filed, with the Minneapolis Office of Administrative Hearings, a timely Petition to Discontinue payment of

workers' compensation benefits on grounds including the assertion that the employee no longer had any restrictions due to his work injury and so, under statutory provisions and case law including Kautz v. Setterlin Co., 410 N.W.2d 843, 40 W.C.D. 206 (Minn. 1987), was no longer entitled to the benefits at issue.¹ About a month later, on August 28, 1998, the employee was released by his treating physician, Dr. Burton Haugen, to return to work part time, which he did on August 31, 1998.

For reasons not clear from the record, the file in this matter was not timely transferred for hearing from the Minneapolis to the Duluth Office of Administrative Hearings. Upon the employer's inquiry into the status of its Petition in November of 1998, the parties agreed that the matter could be heard on February 24, 1999. As of January 18, 1999, the employee was released by Dr. Haugen to return to full time work, and he has done so. On February 18, 1999, the employee filed a Motion to Dismiss the employer's Petition to Discontinue benefits, on grounds that the discontinuance issue was moot because the employee had returned to work on January 18, 1999, at a wage equal to or exceeding his date-of-injury wage and was no longer receiving benefits. Together with his Motion to Dismiss, the employee filed a Petition for Penalty pursuant to Minn. Stat. § 176.225, subd. 1, "based upon the Employer's pursuit of a proceeding which does not present a real controversy" within the meaning of the statute.

The matter came on for hearing on February 24, 1999, at the Duluth Office of Administrative Hearings, on the employer's Petition to Discontinue and the employee's Motion to Dismiss that Petition, together with the employee's Petition for Penalty. As of the date of the hearing, the employee had been paid nearly \$7000.00 in contested wage replacement benefits over the eight-month period from the date of the NOID to January 18, 1999, but he was currently receiving no workers' compensation. Although he had apparently earlier served a Claim Petition alleging entitlement to additional temporary benefits, based on additional injuries on April 1 and May 6, 1998, the employee had no claim pending at the time of the hearing and was making no claim for additional wage loss or permanent partial disability benefits.² Nor was the employer alleging that the employee had received any benefits fraudulently. Upon an initial ruling by the judge on the employee's Motion to Dismiss, the hearing went forward on the merits of the employer's Petition to Discontinue, until all planned hearing testimony had been presented.

By agreement of the parties and the compensation judge, the parties were to be taking the depositions of their respective medical experts, Drs. Yellin and Haugen, post hearing

¹ Under Kautz, an employee is not entitled to temporary benefits unless that employee is disabled.

² This Claim Petition is referenced in an Answer and Motion for Dismissal filed by the employer on March 9, 1999, which are present in the file, although we find no copy of the Claim Petition itself. The fact that the employee had no claim pending for additional benefits is documented in unappealed Finding 14 of the eventual Findings and Order in this matter filed February 25, 1999.

and to be submitting their testimonies to the judge prior to closing of the record. Upon the conclusion of the presentation of other testimony and evidence on the day of the hearing, the compensation judge reversed his earlier ruling and granted the employee's Motion to Dismiss, albeit without prejudice, on grounds that the employer's right to litigate its Petition to preserve "the possibility of a future credit against future benefits" "isn't ripe to litigate until there is benefits in dispute that can be offset." The judge explained that "that will also get the issue quickly before the WCCA, so we can all have some type of understanding as to what we're supposed to do in these cases." Thus, although the employer's Petition to Discontinue had been the basis of most of the testimony and evidence presented at hearing, the only issues identified as "presented for decision" in the judge's Findings and Order filed February 25, 1999, were (1) "[w]hether the self-insured employer may litigate its entitlement to a credit against potential future compensation benefits" and (2) "[w]hether the employee is entitled to penalties for the employer's pursuance of a frivolous claim."³ Having formally found that "[i]t is not ripe to litigate the self-insured employer's right to . . . a credit against future benefits until such time as the employee claims additional benefits," the judge emphasized in his Memorandum that he did not view the employer's claim for a credit as "moot," indicating there that "there appears to be much uncertainty and doubt on this issue in the absence of some appellate guidance (or applicable procedural rule)." On that conclusion the judge also denied the employee's claim for penalties, "as the [employer's] claim is not frivolous." The employer appeals.

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 Refinery, 48 W.C.D. 607, 608 (W.C.C.A. 1993).

DECISION

As the parties and the compensation judge have agreed, this appears to be an issue of first impression.

At Finding 15, the compensation judge found that "[t]he self-insured employer seeks, at this time, to litigate its right to a credit against any potential benefit that the employee may claim in the future." The employer has appealed from this finding. At Finding 1a, the judge concluded that this issue was not ripe. In the Memorandum to his Findings and Order, the judge explained that he had realized after receipt of testimony at hearing "that any ruling at this point in time might well be an academic exercise which would have no impact on the substantive rights of the parties." It was on that basis, he suggested, that he ruled in favor of the employee's Motion

³ Minn. Stat. § 176.225, subd. 1(a), authorizes penalties for the instituting or interposing of a proceeding or defense "which does not present a real controversy," as alleged in this case by the employee, "but which is frivolous or for the purpose of delay."

to Dismiss the employer's Petition. The judge further explained that, at the time of his ruling, "the parties had not yet deposed the treating and examining physicians. Thus, substantial financial expenditures in travel time, court reporter's fees, physician deposition expenses and additional attorneys' time and/or fees will be saved by this ruling." The employer contends initially that the judge misstated the central issue in the case when he identified it as the employer's right to litigate its entitlement to a credit. The employer argued at hearing and essentially on appeal that, while a credit for overpayment might be a natural consequence of a favorable decision on its Petition to Discontinue, it was not the employer's right to a credit but the employer's right to discontinuance of benefits *at the time of the Petition* (and, conversely, the employee's entitlement to benefits being paid him *at that time*) that was most directly at issue in this matter, both at the time of the petition and, consequently, in the eventual hearing on that Petition. The employer suggests that its Petition for Discontinuance was in all ways ripe for determination at the time it was filed and that dismissal of it violated the employer's due process right to be heard. We agree that the Petition for Discontinuance was ripe to be heard and that the compensation judge erred in dismissing it.

Minn. Stat. § 176.238, subd. 6, provides that an expedited hearing pursuant to a Petition to discontinue benefits "shall be limited to the issues raised by the notice or petition unless all parties agree to expanding the issues" (emphasis added). Central to the six "issues raised" in the employer's July 24, 1998, Petition to Discontinue benefits were the issues of whether or not the employee's occupational injury had resolved as of the date of the petition (issue 1 raised in the petition) and whether or not the employee had "no restrictions residual to his occupational injury and [wa]s therefore not entitled to temporary total disability benefits pursuant to statutory provision and interpretive . . . case law, including, but not limited to, Kautz v. Setterlin" (issue 3 raised in the petition). Because the Petition was based on medical opinion that the employee had been unrestricted by his work injury since May 12, 1998, an adjudication of those issues could have retroactive effect to May of 1998. Without conceding that its intention constituted an expansion of the issues raised in its Petition, the employer essentially acknowledged at hearing that, in the process of seeking a determination on these issues and evidence, it was also indirectly seeking grounds for a credit for overpayment of wage replacement benefits between May 1998 and January 1999. It is clear from the employee's Motion to Dismiss, however, that the employee was not agreeing to any expansion of the issues raised by the Petition. Nevertheless, instead of addressing only "issues raised by the notice or petition," as is required by the statute, the judge dismissed the Petition that was the subject of the hearing and addressed in its place the subsidiary issue of "[w]hether the self-insured employer may litigate its entitlement to a credit against potential future compensation benefits." This was an issue perhaps implicitly raised by the employee's Motion to Dismiss, and findings on it were therefore perhaps not inappropriate. However, to the extent that they were intended to do so, those findings as to the employer's entitlement to litigate a credit at this time do not support a dismissal of the "issues raised," in a timely and ripe fashion, in the employer's Petition to Discontinue.

In order to be ripe for judicial determination, an issue must involve definite and concrete assertions of right by parties with adverse interests, must involve a genuine conflict in tangible interests of opposing litigants, and must be capable of relief by decree of judgment. See

Froland v. Am. Hardware Ins. Co., slip op. (W.C.C.A. Oct. 10, 1996), citing Graham v. Crow wing Co. Bd. Of Comm'rs, 515 N.W.2d 81, 84 (Minn. App. 1994), citing St. Paul Area Chamber of Commerce v. Marzitelli, 258 N.W.2d 585, 587-88 (Minn. 1977). The principal basis for the compensation judge's dismissal of the employer's Petition in this case appears to be that, absent any incoming workers' compensation benefits from which to deduct a credit for overpayment, the issue brought to hearing by the employer in this matter is not "capable of relief." We conclude, however, that a favorable adjudication of the employer's right to discontinue all temporary benefits on the date of its NOID, which, importantly, could constitute an adjudicated disentitlement for the employee to any temporary benefits from and after that date, constitutes a sufficiently substantive right to warrant determination of the Discontinuance issue as it was properly posed in the employer's July 24, 1998, Petition to Discontinue. This is particularly true, given the possibility that substantial evidence essential to determination of that matter later might well be lost with a delay in litigation.

An adjudication of the "issues raised" in an employer's Petition for Discontinuance as of the date of that petition is not inappropriate for lack of ripeness even if it comes on for hearing after benefits have otherwise been discontinued. The compensation judge's decision to the contrary is accordingly reversed, and the case is remanded to the judge for consideration of the employer's Petition for Discontinuance on its merits as of the date it was filed.