

JAMES SMUK, Employee, v. WASCHE INTERIORS and STATE FUND MUT. INS. CO.,
Employer-Insurer/Appellants.

WORKERS' COMPENSATION COURT OF APPEALS
MAY 10, 1999

No. [REDACTED SSN]

HEADNOTES

SETTLEMENTS - INTERPRETATION. The parties' stipulation that the "parties expressly agree that the insurer shall have the right to select the qualified rehabilitation counselor . . . which may be necessary for the employee's rehabilitation plan" is interpreted to waive the employee's right to request a change of QRC after the insurer's initial QRC retired.

Reversed.

Determined by Hefte, J., Pederson, J., and Wilson, J.
Compensation Judge: Paul V. Rieke

OPINION

RICHARD C. HEFTE, Judge

The employer and insurer appeal the compensation judge's interpretation of a term of a stipulation for settlement which the employer and insurer allege gives the insurer the right to choose the employee's qualified rehabilitation consultant even after the insurer's initial choice retired. We reverse.

BACKGROUND

On November 17, 1995, James Smuk (employee) sustained multiple work-related injuries in a scaffolding accident while working as a commercial painter for Wasche Interiors, Inc. (employer), which was insured for workers' compensation liability by State Fund Mutual Insurance Company. The employer and insurer asserted that the employee was injured while engaged in a prohibited act. However, the parties settled the employee's workers' compensation claims by stipulation for settlement. An award on stipulation was served and filed on December 17, 1996. The employer and insurer agreed to accept primary liability for the employee's injuries and to pay a \$20,000 lump sum to the employee, as well as temporary total disability benefits to which the employee was entitled from and after September 17, 1996, costs and disbursements, and medical expenses. The employee waived several claims and rights under the stipulation, including that the "parties expressly agree that the insurer shall have the right to select the qualified rehabilitation counselor and any vocational vendor which may be necessary for the employee's rehabilitation plan." In September 1997, the insurer assigned Deb West from CompRehab to be the employee's

qualified rehabilitation consultant (QRC). In December 1997, QRC West retired and the insurer assigned James Reinhart from CompRehab to be the employee's QRC.

On December 22, 1997, the employee filed a rehabilitation request to change his (QRC) to Steven Kurenitz. The employer and insurer objected based on the stipulation for settlement, arguing that under the settlement, the insurer had the right to select the QRC. The employee also filed a claim petition for additional temporary partial disability benefits, and the matters were consolidated. The parties settled the temporary partial disability issue, and the rehabilitation issue was submitted to the compensation judge on stipulated facts. The compensation judge interpreted the stipulation term to mean that the employer and insurer had the right to choose the initial QRC, but that the employee had the right to request a change of QRC. The employer and insurer 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

Generally, an employee has the initial right to a QRC of his or her own choosing. Minn. Stat. § 176.102, subd. 4(a); Minn. R. 5220.0710, subp. 1. "After the initial provision or selection of a qualified rehabilitation consultant . . . the employee may request a different qualified rehabilitation consultant which shall be granted or denied by the commissioner or compensation judge according to the best interests of the parties." Minn. Stat. § 176.102, subd. 4(d). The best interests of the parties are determined with reference to the goals of rehabilitation set out in Minn. Stat. § 176.102, subd. 1(b). Minn. R. 5220.0710, subp. 3. Minn. Stat. § 176.102, subd. 1(b) provides in pertinent part: "Rehabilitation is intended to restore the injured employee so the employee may return to a job related to the employee's former employment or to a job in another work area which produces an economic status as close as possible to that the employee would have enjoyed without disability." In this case, the employee agreed in the stipulation for settlement that the "parties expressly agree that the insurer shall have the right to select the qualified rehabilitation counselor and any vocational vendor which may be necessary for the employee's rehabilitation plan."

The employer and insurer argue that under this term of the stipulation, the insurer has the continuing right to choose the employee's QRC for the duration of his rehabilitation plan because the employee waived his right to choose the initial QRC and also waived selection of the QRC for the duration of his rehabilitation. The employee argues that he only waived his right to choose the initial QRC. The compensation judge found that the stipulation "did not provide that the employee has for all time, waived his statutory right to request appointment of a qualified rehabilitation consultant of his choosing" and therefore that employee had the right to request a

change of QRC. The compensation judge noted in his memorandum that:

The Court does not interpret the terms of the Stipulation to forever disallow the employee the opportunity to request a change to a qualified rehabilitation consultant of his own choice. The terms of the Stipulation speak as to "the" qualified rehabilitation counselor and "the" employee's rehabilitation plan. This interpretation is further in accordance with the precedent that ambiguous contractual terms are to be resolved against the drafter and most importantly corresponds to the overriding legislative and judicial concerns that rehabilitation measures be undertaken within the framework of what is best for the interests of the parties.

We disagree. Under the compensation judge's interpretation, the employee would be entitled to request a change of QRC any time after the appointment of the initial QRC, which would negate the insurer's initial choice as agreed under the stipulation. The stipulation states that the "parties expressly agree that the insurer shall have the right to select the qualified rehabilitation counselor . . . which may be necessary for the employee's rehabilitation plan." The language of the stipulation is not ambiguous. The insurer's right to select the QRC extends for the duration of the employee's rehabilitation plan. Therefore, we reverse. The employee has waived the right to request a change of QRC under the stipulation.