JAMES L. CANTIN, Employee, v. N. STATES POWER CO., SELF-INSURED/ASU RISK MGMT. SERVS., Employer-Insurer/Appellant.

WORKERS' COMPENSATION COURT OF APPEALS
NOVEMBER 27, 2000

No. [REDACTED SSN]

HEADNOTES

ATTORNEY FEES - RORAFF FEES. Substantial evidence supports the compensation judge's finding that the employee's attorney was entitled to Roraff fees for determining which employer was liable for medical expenses even where the expenses had been paid by one insurer.

Affirmed.

Determined by: Rykken, J., Wheeler, C.J., and Wilson, J.
Compensation Judge: William R. Johnson

OPINION

MIRIAM P. RYKKEN, Judge

The self-insured employer appeals from the compensation judge's award of Roraff[1] attorney fees. We affirm.

BACKGROUND

On July 6, 1992, James Cantin, the employee, sustained an admitted injury to his low back in the course of his employment with Northern States Power Company (NSP). On that date, NSP was self-insured for its workers' compensation liability in the state of Minnesota. At the time of the injury, the employee was 49 years old, and earned a weekly wage of $658.40. Following his injury, NSP paid various temporary total disability benefits and medical expenses to and on behalf of the employee. In February 1996, NSP also paid a lump sum payment to the employee, pursuant to a stipulation for settlement, settling out the employee's claim to the extent of 14 percent permanent partial disability of the body as a whole. Under the terms of that settlement, the employer disputed the permanent nature of the employee's injury.

This matter has had a complex procedural history. On May 14, 1996, the employee served a medical request, requesting payment for chiropractic bills in the amount of $438.60, which the employee had incurred between December 5, 1995 and April 26, 1996. On May 28, 1996, the employer filed a medical response, indicating its refusal to pay the claimed chiropractic treatment. In its medical response, the employer stated that it had already paid a total of $6,446.37 for chiropractic treatment, but that the current treatment was for maintenance only, and did not

[1] Roraff v. State, Dep't of Transp., 288 N.W.2d 15, 32 W.C.D. 297 (Minn. 1980).

result in any change in the employee's work ability. The employer relied upon the opinion previously rendered by its medical expert, Dr. David Gottlieb, D.C., following his examination of the employee on October 17, 1994, in which Dr. Gottlieb determined that the employee had not sustained a permanent injury to his low back as a result of his work injury in 1992, and that any further chiropractic care needed in the future would not be related to the employee's July 6, 1992 injury.

In its medical response, the employer also referred to the employee's history that he received recent chiropractic treatment following a work injury he incurred in April 1996. That injury allegedly occurred while the employee was employed by a NSP subsidiary, NRG, which was insured by Lumbermen's Underwriting Alliance (Lumbermen's). The employer alleged in its medical response that it requested the employee to file a new first report of injury, but the employee did not do so. The medical response indicates that the employer deemed the employee's claimed chiropractic care to be related to that new work injury, and not to the employee's 1992 injury at NSP. An administrative conference was scheduled for July 31, 1996, but apparently was not held.

The employer filed a response to a statement of attorney fees[2] on September 16, 1996, stating that it had agreed to pay $50.24 in medical benefits and that "NSP should owe $.00 for attorney's fees," as the fees related to a new injury and were excessive. Following a settlement conference, a compensation judge issued an Order Determining Attorney Fees on January 29, 1997, and ordered $480.00 as reasonable attorney fees for representation of the employee with respect to his claim for medical benefits.

On October 13, 1997, the employee filed a medical request requesting payment of $133.62 in chiropractic expenses incurred between December 27, 1996 and August 19, 1997. By letter dated October 20, 1997, a representative of the self-insured employer's insurance administrator, ASU Risk Management Services, advised the employee's attorney and the employee's chiropractor that the contested bills would be paid by another insurer, Lumbermen's. On October 31, 1997, the employee's attorney advised the ASU representative and the workers' compensation division that the employee would withdraw the medical request, based upon Lumbermen's agreement to pay.

On January 21, 1998, the employee's attorney filed a Statement of Attorney Fees, requesting payment of $432.00 as Roraff attorney fees. In that statement, the employee's attorney stated that the recently-contested medical bills were eventually paid by a more recent insurer for the employee's employer. In an Order Determining Attorney Fees served and filed February 13, 1998, a compensation judge awarded the employee's attorney $432.00 in Roraff fees, along with payment of costs.

On February 19, 1998, the self-insured employer objected to the statement of attorney fees stating that "medical benefits not recovered. Nothing was paid by ASU or self-insured employer, NSP. Bills were paid by LUA [Lumbermen's Underwriting Alliance] within 30 days of receipt." On February 27, 1998, the Office of Administrative Hearings rescinded the

[2] The judgment roll does not include a copy of a statement of attorney fees filed in 1996.

Order Determining Fees, as the order had erroneously stated no objection had been filed when indeed a timely objection had been filed by ASU. The order also allowed the employee's attorney to submit another petition but required him to serve it on the "insurance carrier," Lumbermen's. (Judgment Roll.) On May 15, 1998, the Office of Administrative Hearings served and filed an Order dismissing the petition for attorney fees without prejudice, in response to the employee's attorney's advice that he intended to dismiss without prejudice that petition, "pending a determination as to the liability for payment of the disputed medical bills."

A conference on the previous medical request apparently was scheduled for April 15, 1998, but was continued because Lumbermen's had not been made a party to the action, and because it had a potential intervention claim since it had paid the disputed $133.62 chiropractic bill.

On September 15 and December 16, 1998, an administrative conference was held to address the employee's medical request. Attending that conference were, among others, representatives from both ASU Risk Management Services and Lumbermen's. In the Decision and Order pursuant to Minn. Stat. § 176.106, a representative of the Commissioner of the Department of Labor and Industry determined that the need for the disputed chiropractic treatment was causally related to the employee's July 6, 1992 work injury, and that the disputed treatment was reasonable and necessary. The Commissioner's representative therefore ordered that the self-insured employer, through ASU Risk Management Services, pay for the disputed treatment. The order also notes that Lumbermen's indicated that they did not wish to formally intervene in this matter, although they already had paid the disputed bills.

On March 22, 1999, the employee's attorney filed a Statement of Attorney Fees, requesting payment of Roraff attorney fees in the amount of $2,196.00, based on 12.2 hours of legal services. The employer objected to this statement of attorney fees, asserting that the time spent was excessive in light of the issues in dispute, and that it concerned, in large part, "a dispute created by the employee's attorney, excessively litigated by the employee's attorney, and time spent for the sole purpose of collecting attorney's fees." The employer also asserted that the time expended was not "directly related to dispute over medical benefits, but rather, concerned the dispute over the employee's attorney's claim for attorney's fees." The employer requested a formal hearing on the claim for attorney's fees.

On April 20, 1999, a settlement conference was held before a compensation judge at the St. Paul Settlement Division of the Office of Administrative Hearings. In a decision pursuant to Minn. Stat. § 176.305, subd. 1a, dated April 22, 1999, the compensation judge determined that the employee's attorney had provided valuable legal services to the employee which resulted in liability for payment of medical services. The compensation judge awarded attorney fees based on 10.5 hours of legal services out of the 12.2 hours claimed, stating that:

> The remaining 10.5 hours of legal services claimed were reasonably required to obtain payment for the medical services requested as well as to establish the services as the liability of the 1992 insurer,

> NSP/ASU Risk Management Services. Despite prior payment by Lumbermen's, the employee sought and obtained a determination that NSP/ASU Risk Management Services was the correct insurer liable for the payment. The employee was within his rights to seek a determination that the 1992 employer, NSP, was the liable party, regardless of prior payment by another insurer.

The compensation judge therefore awarded payment of $1,809.00 in attorney's fees, plus $77.00 in costs. The compensation judge disallowed 2.15 hours, a value of $387.00, as that particular time related solely to litigating the payment of attorney's fees. (Judgment Roll.) The self-employer appealed, requesting a formal hearing on the award of attorney fees.

On September 23, 1999, while the appeal of that attorney fee order was pending, the employee filed a separate medical request, claiming payment of $643.51 in chiropractic expenses incurred between July 28 through September 20, 1999. The self-insured employer filed a medical response on September 27, refusing to pay for the claimed chiropractic expenses. The employer argued that the chiropractic treatment was excessive, unreasonable and unnecessary, and not causally related to the employee's injury of July 6, 1992. The employer argued that "it is evident that the employee has sustained other injuries before and after July 6, 1992, which may be responsible for this treatment."

The employer's request for formal hearing on the attorney fees, and the employee's medical request, were consolidated for hearing, held on February 17, 2000, before a compensation judge. In Findings and Order dated March 28, 2000, the compensation judge determined that the claimed chiropractic treatment was reasonable and necessary to cure and/or relieve the effects of the employee's work-related injury of July 6, 1992. The compensation judge also determined that the employee's attorney was entitled to the claimed fee of $1,809.00 for his representation of the employee in the prior medical dispute. The compensation judge determined that the employee earlier had legitimate interests at stake, and agreed with the previous finding that the "employee was within his rights to seek a determination that the 1992 employer, NSP, was the liable party, regardless of prior payment by another insurer." The compensation judge further determined that the "employee thus understood that while Lumbermen's agreed to pay one small bill, there was a principle at stake with respect to the payment of future bills. The employee's attorney acted to fairly represent that interest and should be entitled to payment of his fees." (Finding No. 5.)

The employer appeals from the compensation judge's Order for payment of $1,809.00 in Roraff attorney fees.

STANDARD OF REVIEW

In reviewing cases on appeal, the Workers' Compensation Court of Appeals must determine whether "the findings of fact and order [are] clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 176.421, subd. 1 (1998). Substantial evidence supports the findings if, in the context of the entire record, "they are

supported by evidence that a reasonable mind might accept as adequate." Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 59, 37 W.C.D. 235, 239 (Minn. 1984). Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings are to be affirmed. Id. At 60, 37 W.C.D. at 240. Similarly, "[f]actfindings are clearly erroneous only if the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed." Northern States Power Co. V. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975). Findings of fact should not be disturbed, even though the reviewing court might disagree with them, "unless they are clearly erroneous in the sense that they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." Id.

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

Chiropractic expenses were the only benefits at issue in this case. Without the possibility of an award of Roraff fees, the employee would not have been able to obtain the assistance of counsel. Peterson v. Everything Clean, Inc., 55 W.C.D. 126 (W.C.C.A. 1996). Roraff fees are payable in such cases whether the defense to a medical claim is reasonableness and necessity or primary liability. See Coffey v. Carlton College, slip op. (W.C.C.A. May 6, 1997).

The compensation judge determined that the employee's attorney was entitled to the attorney fees, finding that the employee had legitimate interests at stake, and agreed with the previous finding that the "employee was within his rights to seek a determination that the 1992 employer, NSP, was the liable party, regardless of prior payment by another insurer." The employer argues that Roraff fees are not appropriate in this case. The employer argues that the time spent was excessive in light of the issues and amount of treatment expenses in dispute, and that it concerned a dispute created by the employee's attorney to recover attorney's fees. The employer claims that the litigation on which the employee's attorney expended time was not driven by the employee's legitimate interest of determining responsibility for the medical benefits but was, instead, driven by the employee's attorney's desire for fees.

The employee argues that liability for continuing chiropractic treatment was at issue, which subsequently arose when the employer refused to pay a later claim for treatment in 1999 by claiming, among other defenses, that the treatment was not causally related to the 1992 injury. This later treatment was also found to be causally related to the employee's 1992 injury. The compensation judge stated: "That this matter was protracted was not the doing of [the employee's attorney], but as a result of legitimate attempts to safeguard his client's best interests and to obtain a result in accordance with the opinion of the employee's treating doctor." (Memo. p. 10.) The compensation judge also found that the reason the amount claimed in attorney fees is disproportionate to the amount in dispute relates to the actions taken by the self-insured employer

and its insurance administrator. Substantial evidence supports the compensation judge's finding that the extended nature of the litigation was not due to the employee's attorney's pursuit of attorney fees, and that the employee had "a legitimate interest in establishing who was responsible for his medical benefits." Therefore, we affirm.