

SANG N. LAM, Employee/Appellant, v. DANA CORP. and ITT SPECIALTY RISK SERVS., Employer-Insurer, and AM. FAMILY INS. GRP., Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS  
JULY 19, 2000

No. [REDACTED SSN]

HEADNOTES

INTERVENORS; SETTLEMENTS. Substantial evidence supports the compensation judge's finding that the intervenor was "effectively excluded" from settlement negotiations and was therefore entitled to full reimbursement of its intervention interest.

Affirmed.

Determined by Rykken, J., Johnson, J., and Pederson, J.  
Compensation Judge: Cheryl LeClair-Sommer

OPINION

MIRIAM P. RYKKEN, Judge

The employee appeals the compensation judge's finding that the intervenor was effectively excluded from settlement negotiations and from the award for full reimbursement of the claimed intervention interest. We affirm.

BACKGROUND

On August 8, 1995, Sang N. Lam, the employee, sustained an admitted work-related injury in the nature of bilateral carpal tunnel syndrome while working for Dana Corporation, the self-insured employer. The employer paid intermittent temporary total disability benefits from August 9, 1995, through May 7, 1996, and from June 24, 1997, through June 29, 1997; intermittent temporary partial disability benefits from May 28, 1996, through February 18, 1998; and medical expenses. On March 16, 1998, the employer filed a notice of intention to discontinue temporary partial disability benefits as of February 15, 1998, on grounds that the employee had been taken off work for a non-work-related illness of depression and anxiety reaction. On April 29, 1998, the employee filed an objection to discontinuance of temporary partial disability benefits. In that notice, the employee also claimed entitlement to temporary total disability benefits from and after February 15, 1998. An expedited hearing was set for July 30, 1998.

At the employee's deposition on June 23, 1998, the employer learned that the employee had been involved in a motor vehicle accident on February 26, 1998, and was receiving wage loss benefits from his no-fault carrier, American Family Insurance Group, the intervenor. A representative from American Family attended the hearing on July 30, 1998; apparently there was

a disagreement as to the initial reason that American Family appeared at that hearing. The employee asserts that American Family appeared at the July 30, 1998, hearing attempting to intervene in the claim. In his brief, the employee's attorney asserts that he previously was unaware that American Family had a potential intervention interest, and that "[u]pon learning of American Family's intervention interest, it was determined that the employee would withdraw his claim for wage loss benefits under workers' compensation because any wage loss award would subsequently be paid directly to American Family." (Employee's brief, p. 2.) The employee also states in his brief that he informed American Family that a new claim petition for wage loss benefits would be filed, that it would not include the time period in which American Family had paid wage loss benefits, and that American Family "was advised to proceed with the hearing on July 30, 1998, to attempt to prosecute their alleged intervention interest, if they believed an interest continued to exist." (Employee's brief, p. 2.)

By contrast, the employer contends that American Family did not appear at the July 30, 1998, hearing for the purpose of asserting an intervention interest. The employer advised that it subpoenaed the intervenor's claims adjuster to testify at the hearing in order to present evidence of its basis for discontinuing temporary partial disability benefits. As asserted during oral argument, counsel for American Family attended the July 30, 1998, hearing to represent the claims adjuster who had been subpoenaed to testify.

The employer also argues, contrary to the employee's assertions that he withdrew his wage loss claim upon learning of the intervention interest, that the employee asserted entitlement to temporary total disability benefits after February 15, 1998, on the basis that the employee was experiencing depression or anxiety reaction as a consequential result of his August 8, 1995 injury. At the July 30, 1998, hearing, the employer objected to expansion of the issues, arguing that the only issue that was to be considered at the expedited hearing was the discontinuance of temporary partial disability benefits. The compensation judge disallowed expansion of the issues, and the employee conceded that the employer had a basis for discontinuing temporary partial disability benefits.

In Findings and Order served and filed August 4, 1998, the compensation judge found that the employer had a proper basis to discontinue payment of temporary partial disability benefits on February 15, 1998. The compensation judge dismissed the employee's objection to discontinuance, and also stated that his decision did not limit the employee's entitlement to claim temporary total disability benefits or temporary partial disability benefits from and after February 14, 1998 to date. In his memorandum, the compensation judge stated that it was anticipated that the employee would file a claim petition for temporary total disability benefits from and after February 14, 1998, and that the employee would claim that he sustained a consequential injury as a result of his work-related injury on August 8, 1995.

On October 6, 1998, the employee filed a claim petition for temporary partial disability benefits from and after September 14, 1998 and medical expenses. On December 10, 1998, American Family, the intervenor, filed its motion for intervention seeking reimbursement of \$4,243.30 for wage loss benefits paid from February 26, 1998, through June 19, 1998, even though

the employee was no longer claiming wage loss benefits for this earlier period of time. An order for intervention was served and filed on December 22, 1998. A hearing was scheduled for July 23, 1999. Before that hearing, the employee and the employer entered into a settlement agreement which provided payment of \$17,250.00 to the employee, for a full, final and complete settlement excluding medical expenses, "of any and all past, present or future claims which the Employee has or may have for workers' compensation benefits of whatever kind or nature relative to injuries sustained or allegedly sustained on or about August 8, 1995, including . . . temporary total disability and temporary partial disability . . . ." The employee was to resolve the claimed intervention interest. Since the employee was no longer claiming wage loss benefits for the time he received benefits from the intervenor, the employee believed that the intervention claim had no value. By letter dated July 22, 1999, the employee offered the intervenor \$1.00 to resolve the claim. The letter stated that if the offer was not satisfactory, the intervenor could pursue its claims by requesting a Parker-Lindberg hearing. The intervenor did not accept the offer or make a counter-offer. When that dispute did not settle, the employee and employer agreed that the employer would retain \$4,243.30, the claimed intervention interest, from the employee's payment, pending resolution of the intervention claim. The stipulation for settlement was submitted on October 28, 1999; a partial award on stipulation was served and filed on November 9, 1999, and another partial award on stipulation was served and filed on November 10, 1999.

A Parker-Lindberg hearing was held on September 27, 1999; by then the parties had not finalized the stipulation for settlement. The employee did not appear at the hearing. The record was held open until October 28, 1999 when the stipulation for settlement was served and filed. In a findings and order served and filed December 6, 1999, the compensation judge found that the intervenor had been effectively excluded from settlement negotiations and was entitled to full reimbursement of the intervention claim. The employer has paid the intervenor the withheld amount, plus interest. The employee appeals.

## 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), summarily aff'd (Minn. June 3, 1993).

## DECISION

Any person or entity that may either gain or lose by an order or decision in a workers' compensation proceeding may move to intervene. Minn. Stat. § 176.361, subd. 1. A third-party payer has no standing to initiate a claim petition within the workers' compensation system, and is limited to intervention as a means to assert a claim. Freeman v. Armour Food Co., 380 N.W.2d 816, 38 W.C.D. 445 (Minn. 1986). However, a potential intervenor cannot be expected to file a motion for intervention until it receives notice of a proceeding as required by Minn. R. 1415.1100, subp. 2. Morrisette v. Harrison Int'l Corp., 486 N.W.2d 424, 46 W.C.D. 721 (Minn. 1992). Under the Workers' Compensation Act, third parties are entitled to prompt, written notice of their right to petition for intervention and reimbursement of their claims. The notice must contain specific information about the proceeding to comply with the rules. See Minn. R. 1415.1100, subp.2.

It is not necessary that all parties and all intervenors execute a stipulation for settlement. However, an intervenor or third-party payer who is improperly excluded from participation in negotiations resulting in a final settlement, and who is not a party to the settlement, is entitled to full reimbursement of the amounts paid. Brooks v. A.M.F., Inc., 278 N.W.2d 310, 315, 31 W.C.D. 521, 531 (Minn. 1979). Where an intervenor actually participates in some or all of the settlement negotiations, it may still be deemed to have been "effectively excluded" from the settlement where the settlement offer to the intervenor is not reasonable given all the facts and circumstances of the case, including consideration of the terms of the settlement reached between the employee and the employer and insurer. Parker-Lindberg v. Friendship Village, 395 N.W.2d 713, 39 W.C.D. 125 (Minn. 1986); Brooks, 278 N.W.2d 310, 31 W.C.D. 521 (Minn. 1979). Whether an intervenor has been actually or effectively excluded from settlement negotiations is a question of fact to be resolved by the compensation judge. Parker-Lindberg, 395 N.W.2d at 718, 39 W.C.D. at 134.

In the employee's October 6, 1998, claim petition, the employee did not claim wage loss benefits during the time period that the intervenor paid benefits even though he had previously claimed such benefits in his 1998 objection to discontinuance. By letter dated July 22, 1999, the employee offered the intervenor \$1.00 to resolve the claim. The letter stated that if the offer was not satisfactory, the intervenor could pursue its claims by requesting a Parker-Lindberg hearing. The employee claims that the intervenor's claim had no value, and that since the employee no longer had any incentive to pursue the claim for wage loss benefits, it was the intervenor's obligation to prove that the period of disability for which it paid wage loss benefits was work-related. A similar argument was rejected in Newstrand v. Anderson Fabrics, 59 W.C.D. 243 (W.C.C.A. 1999) and Newstrand v. Anderson Fabrics, slip op. (W.C.C.A. Apr. 21, 1999), where the intervenor was provided with no notice of its potential claim, as 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.

The facts in this case are similar to those in Thanh Le v. Kurt Mfg. Co., 557 N.W.2d 202, 55 W.C.D. 650 (Minn. 1996). In that case, the employee originally claimed entitlement to a period of temporary total disability benefits as well as permanency benefits. A disability insurer intervened for reimbursement of disability payments made during the period of claimed temporary total disability benefits. On the day of hearing, the employee and employer/insurer settled, and advised the intervenor that the only claim being settled was the permanency claim, that no offer was being made with regard to the employee’s wage loss claim and therefore that the intervenor should proceed to prove up the merits of its claim. The intervenor argued that it had been effectively excluded from the settlement negotiations and requested full reimbursement of its intervention interest. The parties submitted a stipulation for settlement after the hearing, in which they stated that the employee had withdrawn all temporary total disability claims originally alleged in her claim petition, that the intervenor’s claim had not been settled, diminished or resolved, and that the employer/insurer denied that the intervenor had a claim that had been settled. The compensation judge approved the stipulation and also ordered full reimbursement to the intervenor.

This court and the supreme court affirmed that award, citing Brooks, 278 N.W. 2d at 315, 31 W.C.D. at 531, holding that “an intervenor who is excluded from participating in negotiations resulting in final settlement and who is not a party to the settlement stipulation should, on principles of equity and public policy, be awarded full reimbursement by the settlement award.” This court noted that the compensation judge “could clearly have concluded that the withdrawal of the temporary total disability portion of the employee’s claim, [which was the initial claim made in the original claim petition,] was either explicitly or implicitly a part of the settlement of the case.” Thanh Le v. Kurt Mfg. Co., 55 W.C.D. 633, 639 (W.C.C.A. 1996). The supreme court affirmed, stating that allowing such settlements could “render a nullity the scheme by which the health and disability insurers obtain recovery.” Le, 557 N.W.2d at 205, 55 W.C.D. at 654.

Given the nature of the employee’s offer to the intervenor, substantial evidence supports the compensation judge’s finding that the intervenor was “effectively excluded” from settlement negotiations, and we affirm.

The employee also argues that the compensation judge erred by determining that the intervenor had been excluded from settlement negotiations when there was no signed stipulation for settlement between the employee and the employer at the time of the hearing. The employee and employer reached their settlement in July 1999. The Parker-Lindberg hearing was

held on September 27, 1999. The stipulation for settlement was submitted on October 28, 1999; a partial award on stipulation was served and filed on November 9, 1999, and another partial award on stipulation was served and filed on November 10, 1999. Generally, 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 question of whether it was appropriate to hold the Parker-Lindberg hearing before an executed stipulation had been submitted was not raised by the employee at the hearing since the employee did not even appear at the hearing. Further, the record was held open until October 28, 1999, when an executed stipulation was received into the record. There is no indication that the terms of the settlement changed before the partial awards on stipulation were filed. The findings and order from the September 27, 1999, Parker-Lindberg hearing were served and filed December 6, 1999, after the partial awards on stipulation had been served and filed. There was no error by the compensation judge.