



Indiana Spine Group, PC (ISG) appeals the dismissal of its Application for Adjustment of Claim for Provider Fee (the Application) by the Worker's Compensation Board (the Board) in favor of All Seasons Holdings, Inc. (All Seasons). ISG presents two issues on appeal, which we consolidate and restate as follows: Did the Board err in determining that it did not have jurisdiction because the Application was filed outside the statute of limitations set out in the Worker's Compensation Act (the Act)?

We reverse and remand.

In December 2004, Gregory Pendergrass sustained a work-related injury while employed by All Seasons. Pendergrass received weekly TTD benefits under the Act through October 13, 2006. Further, pursuant to an agreement between the parties, All Seasons' worker's compensation insurer, Liberty Mutual, made a lump-sum, \$32,500 PPI payment to Pendergrass on November 26, 2006.

As part of the compensable claim, All Seasons also provided medical treatment to Pendergrass through ISG on April 21, 2006. Following the approved treatment, ISG billed Liberty Mutual a total of \$37,003. Liberty Mutual issued two payments on this bill in June 2006. In sum, Liberty Mutual paid a total of \$18,222.84, leaving a remaining unpaid balance of over \$18,000.

On April 8, 2009, ISG filed the instant Application seeking the balance owed. All Seasons responded with a motion to dismiss the Application arguing that it was filed outside the statute of limitations set forth in Ind. Code Ann. § 22-3-3-27 (West, Westlaw through 2010 2<sup>nd</sup> Regular Sess.). Specifically, All Seasons claimed that the Application was required to be filed within two years of the date compensation was last paid to Pendergrass. Thus,

according to All Seasons, ISP should have filed the Application on or before November 26, 2008.

On October 28, 2009, a single hearing member of the Board dismissed the cause for lack of jurisdiction. ISG timely filed an application for review by the Full Board. Following a hearing, the Full Board issued an order, on February 17, affirming the single hearing member's decision and finding that the Application was barred by the two-year statute of limitations set out in I.C. § 22-3-3-27. ISG now appeals.

The material facts and the issue we must decide in this case are identical to those we address today in *Indiana Spine Group, PC, v. Pilot Travel Centers, LLC*, no. 93A02-1003-EX-315 (Ind. Ct. App. 2009). In both cases, there is no dispute that the employee was entitled to benefits under the Act, including the medical care provided by ISG, which had been authorized by the employer. The issue presented by the Application in each case was the amount of ISG's bills that the employer was required to pay (in other words, the pecuniary liability of the employer), not whether the bills were to be paid at all. Thus, neither Application sought modification of the award of worker's compensation benefits to the employee based upon changed conditions.

As explained in *Indiana Spine Group, PC, v. Pilot Travel Centers, LLC*, the Act is silent on the statute of limitations applicable to claims involving the pecuniary liability of employers to medical service providers. Specifically, we held that the two statutes of limitations set out in the Act, I.C. § 22-3-3-3 (West, Westlaw through 2010 2<sup>nd</sup> Regular Sess.) and I.C. § 22-3-3-27, do not apply in this context to bar ISG's claim. With respect to the former, we observed that the statute involved the time period for initiation of a worker's

compensation claim by the employee, a matter not in dispute. Slip op. at 3-4. (“there is no dispute that Wetnight timely sought benefits under the Act or that he presented a compensable injury claim”). We further held that the latter statute, upon which the Board based its dismissal, was inapplicable because there was no *modification* of an award being sought.

For the reasons more fully expressed in *Indiana Spine Group, PC, v. Pilot Travel Centers, LLC*, we hold here that the Board erred in dismissing ISG’s claim pursuant to I.C. § 22-3-3-27. On remand, ISG shall be entitled to a determination on the merits of its application for adjustment of claim for provider fee.

Reversed and remanded.

BARNES, J., and CRONE, J., concur.