IN THE COURT OF APPEALS OF IOWA

No. 8-470 / 07-1795
Filed August 13, 2008

CLIFFORD AYERS,
Petitioner-Appellee,

vs.

D&N FENCE COMPANY, INC. and
EMC INSURANCE COMPANIES,
Respondents-Appellees,

UNITED FIRE & CASUALTY COMPANY,
Intervenor-Appellant.

Appeal from the Iowa District Court for Linn County, Thomas L. Koehler, Judge.

An insurer appeals a judgment entered on a workers' compensation award. **REVERSED AND REMANDED.**

Charles A. Blades of Scheldrup Blades Schrock Sand Aranza, P.C., Cedar Rapids, for appellant.

David O'Brien of Willey, O'Brien, Cedar Rapids, for appellee.

Considered by Miller, P.J., and Vaitheswaran and Eisenhauer, JJ.

VAITHESWARAN, J.

An insurer appeals a judgment entered on a workers' compensation award. As the judgment is inconsistent with recent precedent on the issue, we reverse and remand.

I. Background Facts and Proceedings

Clifford Ayers injured his knee while working for D & N Fence Co., Inc. He petitioned for workers' compensation benefits. In pertinent part, the workers' compensation commissioner ordered "that defendants pay all of claimant's expenses under section 85.27 associated with a knee injury and knee replacement surgery."[1]

On judicial review, the district court and the Iowa Supreme Court affirmed the agency decision. *See Ayers v. D & N Fence Co., Inc.*, 731 N.W.2d 11 (Iowa 2007). The Iowa Supreme Court concluded "Ayers is entitled to reimbursement for his medical expenses." *Id.* at 19.

Ayers subsequently filed a district court motion to have the workers' compensation award reduced to judgment. The parties to the agency proceedings stipulated that, of the $50,667.04 in medical costs billed to Ayers's health insurance company, the company paid $27,129.74. Ayers's out-of-pocket expenses were $507.58.[2]

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[1] The named defendants were D & N Fence Co. Inc. and EMC Insurance Company. It later became apparent that United Fire and Casualty Company rather than EMC was the correct workers' compensation carrier. On rehearing, EMC was relieved of liability and D & N was substituted for "defendants" throughout the agency decision. United Fire and Casualty was allowed to intervene in the judicial review proceedings.

[2] In a resistance to Ayers's motion, United Fire & Casualty alleged on information and belief that EMC paid Ayers's out-of-pocket expenses. The agency record does not reflect such a payment.

The district court granted the motion, ordering judgment "on behalf of the petitioner, Clifford Ayers, and against Defendant, D & N Fence Company, Inc. for $27,129.74 in actual medical expenses and $100 in costs." The court denied a request to reconsider its ruling.

II. Analysis

On appeal, United Fire and Casualty argues that the district court exceeded the scope of its authority under Iowa Code section 86.42 when it entered judgment in favor of Ayers personally for medical expenses paid by a personal health insurer. "The standard of appellate review regarding the permissible scope of a district court judgment is for errors of law." *Rethamel v. Havey*, 715 N.W.2d 263, 266 (Iowa 2006) (*Rethamel II*).

Iowa Code section 86.42 allows a party to present an order or decision of the workers' compensation commissioner to the district court which "shall render a decree or judgment." The court's role is ministerial and is limited to entering a judgment conforming with the award. *Rethamel v. Havey*, 679 N.W.2d 626, 629 (Iowa 2004). The court may, however, construe the commissioner's award. *Id.* at 628.

Here, the commissioner ordered D & N to pay Ayers's medical expenses, but did not specify who was to be paid. In *Rethamel II*, the Iowa Supreme Court addressed this scenario. The court held that "a workers' compensation claimant is *not* entitled to be paid sums for medical and hospital expenses *unless* there is a specific showing that the claimant himself paid for medical expenses." 715 N.W.2d at 66-67 (emphasis in original).

As noted, the agency record reveals that Ayers did not directly pay $27,129.74. Therefore he was not entitled to judgment in that amount.

In reaching this conclusion, we have considered Ayers's contention that the commissioner's decision is no less enforceable simply because he "has to turn around and pay back his health insurance carrier for any amount he is able to recover." The Iowa Supreme Court rejected this argument in *Krohn v. State*, 420 N.W.2d 463, 464-65 (Iowa 1988). Construing virtually identical language in a workers' compensation order, the Court stated, "our review of the language of the deputy's order convinces us that it was not intended to require the State to pay the enumerated medical and hospital expenses directly to the claimant. Rather, it orders the State to satisfy these obligations which arose from a work-related injury." *Id.* at 464.

Ayers maintains this language is not controlling because "the same entity, the State of Iowa, paid the medical expenses through its health insurance benefit program that was responsible for the payment of workers' compensation benefits." *Krohn* did not turn on this factual distinction. As the Court noted, the obligation to pay the claimant's medical expenses was the employer's. *Id.* The employer could satisfy this obligation by paying the suppliers directly or by making other arrangements. *Id.* at 464-65. As in this case, Krohn's health insurer initially paid the expenses. *Id.* at 465. This fact did not relieve the employer of liability for the expenses. *Id.* There, as here, the remedy was not to enter judgment in favor of the claimant but to allow the insurer to recover from the employer. *Id.*

In *Rethamel II*, the Court provided guidance on the language to be used in this type of judgment, including language on enforcement of the judgment. The court stated:

> An appropriate way to "construe" the award would be to enter judgment stating "Rethamel is liable for Havey's medical expenses." Such a judgment could be enforced "at the time of execution or by a separate action" by whoever provided the medical care, or whoever already paid for the medical expenses.

We reverse and remand for entry of judgment in conformity with the commissioner's award. We find it unnecessary to address United Fire and Casualty's remaining argument concerning a release executed by Ayers.

REVERSED AND REMANDED.