

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

University of Pennsylvania and	:	
Broadspire,	:	
Petitioners	:	
	:	
v.	:	No. 7 C.D. 2010
	:	
Bureau of Workers' Compensation	:	Submitted: May 14, 2010
(Jaeger),	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY

FILED: June 29, 2010

The University of Pennsylvania (Employer) and Broadspire, insurer, petition for review of a decision of the Bureau of Workers' Compensation (Bureau), Fee Review Hearing Office, dismissing, without further action, Employer/Broadspire's request for a hearing on the Applications for Fee Review filed by Scott H. Jaeger, M.D., based on Employer/Broadspire's failure to properly file the request within thirty (30) days of the date of the Administrative Decision on Application for Fee review.¹ We affirm.

¹ Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law or whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704; Pittsburgh Mercy Health System v. Bureau of Workers' Compensation,

(Continued....)

On October 30, 2009, the Bureau issued an Administrative Decision regarding Dr. Jaeger's Applications for Fee Review pursuant to Section 306(f.1)(5) of the Workers' Compensation Act (Act).² Therein, the Bureau stated that it had conducted an investigation and as a result, the amount due to Dr. Jaeger was \$102,705.00 plus interest. The Administrative Decision further indicated that a copy of the decision was sent to Employer, Dr. Jaeger, and the Trustees of the University of Pennsylvania as Insurer/TPA.³ The Administrative Decision also contained a

Fee Review Hearing Office (US Steel Corporation), 980 A.2d 181 (Pa. Cmwlth. 2009).

² Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §531(5). Section 306(f.1)(5) provides as follows:

(5) The employer or insurer shall make payment and providers shall submit bills and records in accordance with the provisions of this section. All payments to providers for treatment provided pursuant to this act shall be made within thirty (30) days of receipt of such bills and records unless the employer or insurer disputes the reasonableness or necessity of the treatment provided pursuant to paragraph (6). The nonpayment to providers within thirty (30) days for treatment for which a bill and records have been submitted shall only apply to that particular treatment or portion thereof in dispute; payment must be made timely for any treatment or portion thereof not in dispute. A provider who has submitted the reports and bills required by this section and who disputes the amount or timeliness of the payment from the employer or insurer shall file an application for fee review with the department no more than thirty (30) days following notification of a disputed treatment or ninety (90) days following the original billing date of treatment. If the insurer disputes the reasonableness and necessity of the treatment pursuant to paragraph (6), the period for filing an application for fee review shall be tolled as long as the insurer has the right to suspend payment to the provider pursuant to the provisions of this paragraph. Within thirty (30) days of the filing of such an application, the department shall render an administrative decision.

³ "TPA" stands for Third Party Administrator.

section outlining the parties' further hearing rights which stated that a request for a *de novo* hearing may be dismissed, without further action, by the Bureau pursuant to 34 Pa. Code §127.257(d), if the request was received more than thirty (30) days after the date of the Administrative Decision. Accordingly, any request for a *de novo* hearing in this matter had to be received by the Bureau on or before November 29, 2009.

By letter dated December 7, 2009, counsel for Employer/Broadspire informed the Bureau that they disputed the October 30, 2009, Administrative Decision; therefore, Employer/Broadspire requested a *de novo* hearing in accordance with 34 Pa. Code §127.257. Counsel stated that Employer/Broadspire recognized that the request for a *de novo* hearing was outside the customary thirty (30) day appeal period; however, the Administrative Decision was erroneous because Dr. Jaeger, the provider, failed to serve a copy of the fee review applications on Broadspire as required by 34 Pa. Code §127.252, or to serve counsel of record for Employer/Broadspire. Counsel pointed out that, as evidence of the failure to notify the appropriate parties, the October 30, 2009, Administrative Decision listed the Trustees of the University of Pennsylvania as the Insurer/TPA rather than Broadspire.

Counsel further pointed out that Dr. Jaeger was aware that Broadspire was the TPA and that Counsel represented Employer/Broadspire. Counsel contended that despite being aware of the interested parties in this matter, Dr. Jaeger failed to identify the appropriate parties to the Bureau and failed to provide notice. Counsel contended further that the first time Broadspire or Counsel was aware of the fee review applications was upon receipt of a fax from Dr. Jaeger dated December 7, 2009, wherein the doctor requested payment of bills pursuant to the October 30, 2009, Administrative Decision. In addition, Counsel requested that the initial fee review applications filed by Dr. Jaeger be stricken because one of the applications was filed outside the time requirements instituted in 34 Pa. Code §127.252. As

support for the foregoing contentions, Counsel attached certain correspondence between Dr. Jaeger and Broadspire and other documentation dated between August 5, 2009, and December 7, 2009.

By decision issued December 10, 2009, the Bureau, Fee Review Hearing Office, dismissed without further action Employer/Broadspire's request for a *de novo* hearing as untimely. By letter dated December 16, 2009, Counsel for Employer/Broadspire requested reconsideration of the Bureau's December 10, 2009, decision.

In response to Employer/Broadspire's request for a *de novo* hearing, Counsel for Dr. Jaeger, by letter dated December 18, 2009, objected to the request for a *de novo* hearing and provided the Bureau with, *inter alia*, the initial applications for fee review filed by Dr. Jaeger on September 23, 2009. Counsel for Dr. Jaeger contended that the request was untimely and the allegations made in support of the untimely request were not supported: (1) as copies of the fee review applications were sent Broadspire's address; (2) as part of the investigation of the fee review applications, the Bureau contacted Broadspire over three weeks prior to issuing the October 30, 2009, Administrative Decision; and (3) as the October 30, 2009, Administrative Decision indicates, Employer and Broadspire each got notice of the decision.

The Bureau did not respond to Employer/Broadspire's request for reconsideration. This appeal followed.

We begin by outlining the fee review process. As noted herein, pursuant to Section 306(f.1)(5) of the Act, a provider may dispute the amount or timeliness of the payment from the employer or insurer for treatment provided pursuant to the Act. 77 P.S. §531(5). In order to dispute the amount or timeliness of the payment, a provider must file an application for fee review with the Bureau no

more than thirty (30) days following notification of a disputed treatment or ninety (90) days following the original billing date of treatment. Section 306(f.1)(5) of the Act, 77 P.S. §531(5).

The Bureau has promulgated regulations governing review of medical fee disputes. Pursuant to 34 Pa. Code §127.252(a), a provider seeking review of fee disputes shall file the original and one copy of a form prescribed by the Bureau as an application for fee review. The application shall be filed no more than thirty (30) days following notification of a disputed treatment or ninety (90) days following the original billing date of treatment which is the subject of the fee dispute, whichever is later. 34 Pa. Code §127.252(a). Providers are required to serve a copy of the application for fee review upon the insurer. 34 Pa. Code §127.252(b). Proof of service shall accompany the application for fee review and shall indicate the person served, the date of service and the form of service. Id.

After a provider has provided all the required documentation and is entitled to a decision on the merits of the application for fee review, the Bureau will render an administrative decision within thirty (30) days of receipt of all required documentation from the provider. 34 Pa. Code §127.256. The Bureau will, prior to rendering the administrative decision, investigate the matter and contact the insurer to obtain its response to the application for fee review. Id.

A provider or insurer shall have the right to contest an adverse administrative decision on an application for fee review. 34 Pa. Code §127.257(a). The party contesting the administrative decision shall file a written request for a hearing with the Bureau within thirty (30) days of the date of the administrative decision on the fee review. 34 Pa. Code §127.257(b). An untimely request for a hearing may be dismissed without further action by the Bureau. 34 Pa. Code §127.257(d).

Herein, Employer/Broadspire argue that the Bureau erred as a matter of law in failing to grant the requested *de novo* hearing on a *nunc pro tunc* basis. Employer/Broadspire argue that because Dr. Jaeger's applications for fee review were untimely filed and not properly served on Employer, Broadspire and their Counsel, the Bureau erred by ruling on the applications. Employer/Broadspire argue further that because Dr. Jaeger did not properly serve Employer, Broadspire or their Counsel, the Bureau also did not properly serve the October 30, 2009, Administrative Decision. Employer/Broadspire contend that given the multitude of errors, the Fee Review Hearing Office should have granted a *de novo* hearing on Dr. Jaeger's application for fee review. Employer/Broadspire contend that they and their Counsel did not act in a negligent manner and in fact did nothing at all to cause their failure to receive either the applications for fee review or the October 30, 2009, Administrative Decision in time to request a *de novo* hearing under the thirty (30) day time limit. Employer/Broadspire contend that it was Dr. Jaeger's misrepresentation of the proper address for service and the doctor's failure to add Counsel's address to the proof of service, that caused Employer and Broadspire to request a *de novo* hearing in an untimely manner. Finally, Employer/Broadspire argue that they were denied their constitutional right to due process by not being provided with the applications for fee review and with a copy of the October 30, 2009, Administrative Decision in time to request a *de novo* hearing.

Based upon a review of the documents that the Bureau certified as contained in the original record, we conclude that the Bureau, Fee Review Hearing Office, did not abuse its discretion in dismissing, without further action, Employer/Broadspire's request for a *de novo* hearing. The copies of the Applications for Fee Review submitted by Dr. Jaeger, as the provider, show that Broadspire and Employer both were listed on the applications. Reproduced Record

(R.R.) at 80a-83a. In the box labeled “Insurer or Third Party Administrator (if self insured)”, Dr. Jaeger listed the “Trustees of University of Pennsylvania c/o Broadspire (TPA)” and included Broadspire’s address. Id. This is the same information found on the sixty (60) Health Insurance Claim Forms that were provided to Broadspire by Dr. Jaeger to support his claims for payment for the treatment provided to the claimant. R.R. at 12a-51a. In addition, Employer/Broadspire admit that the applications list Broadspire’s correct address. In the box labeled “Employer”, Dr. Jaeger listed the University of Pennsylvania and included Employer’s correct address. Thus, Dr. Jaeger provided the Bureau with both Employer and Broadspire’s correct addresses.

Moreover, there is a certificate of service attached to each application for fee review wherein Dr. Jaeger certifies that copies of the applications and the supporting documentation were sent, via first class mail, to the “Trustees of University of Pennsylvania c/o Broadspire (TPA)” at Broadspire’s correct address as listed on the applications. R.R. at 80a-83a. As stated previously herein, 34 Pa. Code §127.252(b) requires that a provider serve a copy of the application for fee review and the supporting documentation upon the insurer. Section 127.252(b) further requires that the proof of service accompany the application and that it indicate the person served, the date of service and form of service. As such, Dr. Jaeger properly served the applications for fee review in accordance with the regulations governing review of medical fee disputes.

It is well settled that "[a] *nunc pro tunc* appeal may be allowed where extraordinary circumstances involving fraud or some breakdown in the administrative process caused the delay in filing, or where non-negligent circumstances related to the appellant, his or her counsel or a third party caused the delay." McClellan v. Unemployment Compensation Board of Review, 908 A.2d 956,

959 (Pa. Cmwlth. 2006) (quoting J.A. v. Department of Public Welfare, 873 A.2d 782, 785 (Pa. Cmwlth. 2005)). Here, Employer/Broadspire argue they are entitled to a *de novo* hearing *nunc pro tunc* because Dr. Jaeger misrepresented the proper address for service and he failed to add counsel to the proof of service. However, it is undisputed that Dr. Jaeger provided the correct address for Broadspire on the applications for fee review. Therefore, Employer/Broadspire's argument that Dr. Jaeger misrepresented the address with the Bureau is without merit. Moreover, the regulations governing the review of medical fee disputes do not require that the application for fee review be served upon counsel for an insurer or an employer. 34 Pa. Code §127.252.

Finally, we reject Employer/Broadspire's argument that their due process rights were violated by the denial of the request for a *de novo* hearing. The regulations clearly provide that a party may contest an administrative decision on a fee review by filing a timely request for a *de novo* hearing. 34 Pa. Code §127.257. Thus, there are due process protections in place in order for a party to have a meaningful opportunity to be heard. Herein, it was Employer/Broadspire's failure to timely request the *de novo* hearing that prevented them from taking advantage of their due process rights granted by 34 Pa. Code §127.257.

We conclude that the Bureau acted well within its discretion in dismissing Employer/Broadspire's request for a *de novo* hearing given the documents contained in the original record in this matter and Employer/Broadspire's failure to establish that they are entitled to a *nunc pro tunc* hearing. Accordingly, we affirm the December 10, 2009, decision of the Bureau, Fee Review Hearing Office,

dismissing without further action, Employer/Broadspire's request for hearing as untimely.⁴

JAMES R. KELLEY, Senior Judge

⁴ We will not address Employer/Broadspire's arguments that Dr. Jaeger filed one of his applications for fee review late and that the Bureau failed to issue its fee review decision within 30 days of the receipt of the documentation provided by Dr. Jaeger as these issues go to the merits of the October 30, 2009, Administrative Decision.

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	:	
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(Jaeger),	:	
	:	
Respondent	:	

ORDER

AND NOW, this 29th day of June, 2010, the December 10, 2009, decision of the Bureau of Workers' Compensation, Fee Review Hearing Office, entered in the above-captioned matter is affirmed.

JAMES R. KELLEY, Senior Judge