[J-35-2010]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, ORIE MELVIN, JJ.

DEPARTMENT OF LABOR & INDUSTRY, BUREAU OF WORKERS' COMPENSATION,	:	No. 102 MAP 2009
	:	Appeal from the Opinion and Order of the Commonwealth Court at No. 2211 CD 2007, dated February 2, 2009, affirming the Order of the Workers' Compensation Appeal Board, dated November 8, 2007 at No. A07-0684
Appellant	:	
v.	:	
	:	965 A.2d 332 (Pa.Cmwlth. 2009) (en banc)
WORKERS' COMPENSATION APPEAL BOARD (CRAWFORD & COMPANY),	:	
	:	
Appellees	:	ARGUED: May 11, 2010

OPINION

MR. JUSTICE EAKIN **DECIDED: July 19, 2011**

Claimant Kevin Ressler suffered a recognized work injury July 21, 1995, in the nature of tendonitis of the right shoulder. A notice of compensation payable was issued, and Mr. Ressler began receiving Workers' Compensation benefits and coverage for his medical bills. On March 16, 2004, Mr. Ressler submitted to an independent medical evaluation (IME); the sequence of events thereafter is the crux of this case.

On June 1, 2004, Mr. Ressler had surgery, purportedly associated with the work-related injury. On July 19, 2004, employer filed a petition to terminate benefits as of March 16, the date of the IME. The employer concurrently requested supersedeas pursuant to § 413 of the Workers' Compensation Act, 77 P.S. §§ 1-1041.4. A Workers' Compensation Judge (WCJ) denied the supersedeas request August 30, 2004. On

October 11, 2004, a $35,405.45 bill for the June 1 surgery was submitted to the insurer, which paid the bill January 25, 2005. On June 28, 2005, a WCJ granted the employer's July 19 petition to terminate benefits. The Workers' Compensation Appeal Board (WCAB) affirmed the decision.

The insurer then requested reimbursement of $35,405.45 from the Supersedeas Fund.[1] However, the Bureau of Workers' Compensation, in its capacity as conservator of the Fund, challenged the request because Mr. Ressler's surgery predated the supersedeas request.[2] The WCJ found that while a service date generates the potential for a claim, no obligation to pay arose until a bill was submitted to the insurer in October; as the obligation to pay arose after the denial of supersedeas, reimbursement was appropriate. The WCAB affirmed.

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[1] See 77 P.S. § 999(b) ("There is hereby established a special fund in the State Treasury, separate and apart from all other public moneys or funds of this Commonwealth, to be known as the Workmen's Compensation Supersedeas Fund. The purpose of this fund shall be to provide moneys for payments … to include reimbursement to the Commonwealth for any such payments made from general revenues. The department shall be charged with the maintenance and conservation of this fund. The fund shall be maintained by annual assessments on insurers and self-insurers under this act, including the State Workmen's Insurance Fund. …").

[2] Section 443(a) provides:

> If, in any case in which a supersedeas has been requested and denied under the provisions of section 413 or section 430, payments of compensation are made as a result thereof and upon the final outcome of the proceedings, it is determined that such compensation was not, in fact, payable, the insurer who has made such payments shall be reimbursed therefor.

Id., § 999(a).

On appeal, the en banc Commonwealth Court determined:

> the language of Section 443 of the Act "is clear in its focus on payments made rather than on periods of disability" and "contains no plain language prohibiting reimbursement of retroactive benefits." Thus, "the right to reimbursement relates to payments made after denial of a supersedeas request." Here, it does not matter that the date of service of the medical expenses in question preceded the request for supersedeas – what matters is that the treatment in question was later determined to be ineligible for payment, and the bill for that treatment was submitted to and paid for by Insurer after supersedeas was requested and denied. Thus, we agree with the Board that Insurer is eligible for reimbursement from the Supersedeas Fund. This outcome is clearly in line with the language of the statute and recent case law.

Dep't of Labor & Indus. Bureau of Workers' Comp. v. Workers' Comp. Appeal Bd. (Crawford & Co.), 965 A.2d 332, 338-39 (Pa. Cmwlth. 2009) (en banc) (emphasis in original) (citations omitted).

Judge Pellegrini, joined by Judge Friedman, dissented, opining that whether a payment is made "as a result" of supersedeas denial is determined by whether the insurer would have been required to pay the bill if the supersedeas had been granted. Id., at 340 (Pellegrini, J., dissenting). He stated supersedeas only relieves the insurer of making payments from the day of its granting and does not sanction recoupment of any payments made prior to that date. Id., at 341. Under Judge Pellegrini's analysis, even if supersedeas had been granted, the insurer was still obligated to pay expenses incurred before it filed the supersedeas request, such that the payments made could not have been made as the result of supersedeas denial, as is required by § 443(a). Id.

We granted appeal to consider "[w]hether the Supersedeas Fund may deny reimbursement of medical treatment rendered before an insurer requested supersedeas, where the Workers' Compensation Act only permits reimbursement of amounts paid as a result of a denial of supersedeas?" Dep't of Labor & Indus. Bureau of

Workers' Comp. v. Workers' Comp. Appeal Bd. (Crawford & Co.), 987 A.2d 637 (Pa. 2009) (per curiam).

The Bureau argues § 443(a)'s language pertaining to payments made "as a result" of a denial of supersedeas does not allow the insurer to recover reimbursement for treatment costs incurred prior to the supersedeas filing. As the insurer did not request supersedeas until six weeks after the surgery, the insurer could not have made the payment as a result of denial of supersedeas as required by § 443(a). Payment, the Bureau argues, was an obligation cemented by the failure to seek supersedeas before the service was provided. To find as did the Commonwealth Court, it contends, may encourage insurers to withhold payment of medical bills until after supersedeas requests are resolved, improperly shifting medical costs to the Supersedeas Fund and its contributing employers.

The insurer points to the plain language of § 443(a), which does not mention medical services when referring to supersedeas timing; the statute points to "payment of compensation" as the triggering event when evaluating an insurer's right to reimbursement. It contends it is sufficient under § 443(a) that Mr. Ressler's treatment occurred after he had fully recovered, and the relevant medical bill was submitted to and paid by the insurer after the date supersedeas was requested and denied. Section 413 echoes this conclusion: "A supersedeas shall serve to suspend the payment of compensation in whole or to such extent as the facts alleged in the petition would, if proved, require." 77 P.S. § 774(2) (emphasis added).

The insurer discounts the Bureau's policy arguments, pointing out the Act requires insurers to make all payments within 30 days of receipt unless the bill itself is disputed; thus, there is no incentive for insurers to delay payments because they will be penalized for doing so. It further notes the Supersedeas Fund is maintained for the very

purpose embodied in this case – it is simply seeking reimbursement from the Fund to which it contributed of the amount it paid for a bill that was ultimately determined to be unrelated to Mr. Ressler's work injury.

In reviewing an agency decision, our standard of review is restricted to determining whether there has been a constitutional violation, an error of law, or a violation of agency procedure, and whether necessary findings of fact are supported by substantial evidence. 2 Pa.C.S. § 704; Pieper v. Ametek-Thermox Instruments Div., 584 A.2d 301, 303 (Pa. 1990). Statutory interpretation poses a question of law; thus, our standard of review is de novo, and our scope of review is plenary. Borough of Heidelberg v. Workers' Comp. Appeal Bd. (Selva), 928 A.2d 1006, 1009 (Pa. 2007).

The elements in the relatively straightforward language of § 443(a) can be examined in order, as the facts are not in dispute. First, is this a case "in which a supersedeas has been requested and denied"? It is – supersedeas was requested in July, 2004, and denied August 20, 2004. Second, was the request under the provisions of § 413 or § 430? The record shows it was under § 413.[3] Third, were payments made "as a result" of the August 20 denial? This is the contested element. The bill for the June surgery did not arrive until six weeks after the denial of supersedeas, and as denial meant the insurer was not relieved of the obligation to pay the bill, payment was indeed the result of the denial. Someone owed payment on the surgical bill, but the

[3] Section 413 concerns alterations to an existing compensation framework, whereas § 430 generally involves appeals from an adverse WCJ judgment. While there are various distinctions between the two provisions, see, e.g., Mark v. Workers' Comp. Appeal Bd. (McCurdy), 894 A.2d 229, 236 (Pa. Cmwlth. 2006) (en banc) (discussing treatment of both sections by Commonwealth Court), those differences are not relevant to our current inquiry. The fact that the legislature coupled the two provisions shows § 443(a) must apply equally to each, and there is no reason to differentiate applicability of § 443(a) based on which of the two was involved. What is relevant is that supersedeas was requested pursuant to one of those sections, in this case § 413.

insurer denied liability for it – payment by the insurer of the bill (pending resolution of liability) was mandated by denial of supersedeas, not from an obligation necessitated by the surgery itself. Lastly, was there a final determination that compensation was not in fact payable? Yes, the WCJ ultimately granted the petition to terminate benefits as of the March 16, 2004 IME date. Accordingly, "the insurer who has made such payments shall be reimbursed therefor." 77 P.S. § 999(a).

As a result of the August supersedeas denial, the insurer had no choice but to pay the October bill, despite the fact that Mr. Ressler's surgery corrected no work-related injury. That ultimate obligation to pay was undetermined when the bill was due, but the duty to pay it in the meantime fell to the insurer as supersedeas had been denied. Ultimately, it was not an obligation of the insurer; the insurer's payment cannot be the result of the surgery, for in the end, it had no responsibility for that bill at all. What the insurer did have the obligation to do was cover the bill pending the final determination, and that obligation was the direct and singular result of the denial of supersedeas.

To make reimbursement dependent on the date of the event giving rise to the bill is to insert an additional element into the statute. In fact, Judge Pellegrini's dissent is telling. Judge Pellegrini states "grant of supersedeas only relieves an employer of making payments from the day it was granted; it does not authorize the recoupment of any payments made before that date." Crawford & Co., at 341 (Pellegrini, J., dissenting) (emphasis added). The insurer is not asking for payments made before the supersedeas filing date, much less the date of granting supersedeas – this is about a payment made after denial, an obligation incurred when the insurer was denied permission to suspend compensation payments.

The legislature has expressly conferred broad suspension authority on WCJs during the litigation of termination, suspension, or modification petitions, 77 P.S. §774(2), and we cannot find a WCJ lacks the authority to suspend insurer-provided compensation payments relative to treatment rendered before the date of a supersedeas request. One can fathom a host of situations where justice might require a supersedeas relative to payment for past medical services, such as where the treatment is unrelated to a work injury, the employer had no notice or opportunity to challenge the treatment prior to its execution, or where the insurer has no precertification or prior approval of the treatment. To tie the WCJ's hands in light of the plain language of the statute and the clear authority provided by the legislature would go against our duty to effectuate the legislature's intentions, 1 Pa.C.S. § 1921(a), and we decline to do so.

The insurer challenged its obligation via the supersedeas — when that was denied, the insurer lost the right to delay payment until the issue of responsibility was resolved. The insurer continued meeting its responsibility until the WCJ found Mr. Ressler was not suffering from a work-related injury at the time of the surgery. Had supersedeas been granted, payment would not have been made, but supersedeas was not granted and payment necessarily followed. It is the bill, post-denial, that caused money to leave the coffers of the insurer. Ergo, payment resulted from the denial. As the date the bill arose is irrelevant under the plain language of the statute, we find the Commonwealth Court appropriately ordered reimbursement to the insurer for undue payments made after request of supersedeas and in direct response to its denial.

Order affirmed; jurisdiction relinquished.

Mr. Chief Justice Castille, Messrs. Justice Saylor and Baer and Madame Justice Orie Melvin join the opinion.

Mr. Justice McCaffery files a dissenting opinion in which Madame Justice Todd joins.