[J-8-2005]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

RENEE SNIZASKI, WIDOW OF RANDY SNIZASKI, DECEASED,	:	No. 36 WAP 2004
Appellant	:	Appeal from the Order of the Commonwealth Court entered March 19, 2004 at No. 154CD2003, affirming the Order of the Workers' Compensation Appeal Board entered December 20, 2002 at No. A01-1460.
v.	:	
WORKERS' COMPENSATION APPEAL BOARD (ROX COAL COMPANY),	:	847 A.2d 139 (Pa. Cmwlth. 2004) (en banc)
Appellees	:	RE-SUBMITTED: March 16, 2005

DISSENTING OPINION

MADAME JUSTICE NEWMAN **DECIDED: FEBRUARY 22, 2006**

The Majority concludes that, "where, as here, an employer timely files a request for supersedeas pursuant to the Board's regulations, it cannot be subject to a penalty award for failing to pay the underlying benefit during the pendency of the supersedeas petition." (Opinion of Majority, slip op. at 2.) I believe this conclusion is inconsistent with the governing provisions of the Workers' Compensation Act (Act)[1] and must respectfully dissent.

The June 13, 2000 Order of the Board to pay Claimant compensation at a rate of $527.00 per week triggered the legal duty of Employer to begin paying benefits to Claimant

[1] Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §§ 1-1041.4; 2501-2626.

within thirty days pursuant to Section 428 of the Act.[2] On July 6, 2000, Employer filed a timely Application for Supersedeas with the Board and an appeal with the Commonwealth Court.[3] It is beyond cavil that Claimant was entitled to benefits within thirty days of the June 13, 2000 Order of the Board and that Employer did not commence payment of benefits within thirty days. See 77 P.S. § 921. Employer argued, and the Majority concludes, that the filing of a supersedeas request tolls the obligation of Employer to pay benefits until the supersedeas request is either decided or deemed denied. This, however, is contrary to law and flies in the face of basic statutory construction. See 1 Pa.C.S. § 1901, et seq.; 1 Pa.C.S. § 1921 ("when the words of a statute are clear and free from ambiguity, the letter of it is not to be disregarded under the pretext of pursing its spirit.").

The Majority determines that the term "default" is undefined in Section 428 and therefore, undefined in the Act. The Majority reasons that, because Section 428 does not define when "default" occurs, the regulations of the Board rather than the provisions of the Act should be utilized to define the point in time at which the employer has an obligation to

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[2] Section 428 of the Act, 77 P.S. § 921, states:

> Whenever the employer . . . shall be in default in compensation payments for thirty days or more, the employe or dependents entitled to compensation thereunder may file a certified copy of the agreement and the order of the department approving the same or of the award or order with the prothonotary of the court of common pleas of any county, and the prothonotary shall enter the entire balance payable under the agreement, award or order to be payable to the employe or his dependents, as a judgment against the employer or insurer liable under such agreement or award. . . . Such judgment shall be a lien against property of the employer or insurer liable under such agreement or award and execution may issue thereon forthwith.

[3] Pursuant to Pennsylvania Rule of Appellate Procedure 1781(a), where a party has appealed a governmental determination to a reviewing court, an application for a stay or supersedeas must be filed with the deciding tribunal in the first instance.

pay benefits. This reasoning is critically flawed and does not comport with the plain language provisions of the Act. Moreover, even if "default" were an ambiguous term, resort to a definition is preferable to the wholesale adoption of the Board regulations, which themselves do not define "default." Further, there is no argument that the term "default" is ambiguous to require the Majority to depart from the clear language and meaning of the statute.

A "default" is defined in Black's Law Dictionary as a failure to perform a legal duty. Black's Law Dictionary 428 (7th ed. 1999). Within the workers' compensation scheme, there are many legal duties that can be imposed upon an employer and from which the employer may default. Several examples immediately come to mind -- issuance of a notice of compensation payable or notice of compensation denial, payment of the claimant's average weekly wage, payment of medical expenses, payment of fatal claim benefits, and payment of specific loss benefits. Determining when the obligation arises in each of these major areas is not difficult. The obligation arises when the order creating the legal duty is filed. In the instant matter, the obligation to pay fatal claim benefits arose on June 13, 2000, when the Board entered its Order denying reconsideration and awarding benefits to Claimant in a stated amount.[4]

The mere filing of a supersedeas request is not enough to suspend Employer's obligation to remit benefit payments pursuant to the Act. That request must be granted. See 77 P.S. § 991. The General Assembly, thus, anticipated the precise situation before us and has indicated that "a petition to terminate, suspend or modify a compensation agreement . . . or award as provided in this section shall not automatically operate as a supersedeas . . . ." Section 413, 77 P.S. § 774(2). Further, the Act mandates that "[a]ny

[4] Although the Board awarded benefits on October 21, 1999, it remanded the matter to the WCJ for a calculation of benefits. Employer was not in default of that Order because the amount of the benefit was not yet known.

insurer who suspends, terminates or decreases payments of compensation without . . . having requested **and been granted** a supersedeas . . . shall be subject to penalty as provided in Section 435 [77 P.S. § 991]." Section 413(b), 77 P.S. § 774.1 (emphasis added). In other words, the employer is not entitled to self-help. An employer who is adjudicated responsible for workers' compensation payments must commence those payments within thirty days. The employer that fails to commence payment within thirty days, has, sua sponte, suspended those benefits and is in default. I find myself bound by the plain language of the statute, which clearly uses the conjunctive "and" requiring the granting of a supersedeas request before benefits may be halted.

Section 428 of the Act provides that an employer violates the Act if it fails to make payments within thirty days of the date on which its obligation to pay arises. There is no exception contained in the statute that would toll that limitations period. Section 430 of the Act provides that discretionary penalties may be imposed on an employer that fails to pay benefits within the thirty-day time period. 77 P.S. § 971(b). Nothing in the regulations states that a request for supersedeas tolls the time constraints of Section 428. Nothing in Section 428 indicates that its provisions may be tolled by filing a request for supersedeas. Moreover, a grant of supersedeas does not relate back to the date on which the request was filed.

Further support for this interpretation is supplied by the rules relative to a supersedeas. It is axiomatic that a supersedeas provides prospective, not retroactive, relief. Therefore, once the obligation to pay benefits arises, an employer must continue to pay those benefits until the supersedeas is granted. Once granted, the supersedeas does not provide retroactive relief for the employer, but only permits the employer to cease payment of some or all benefits from that point forward. If there was no entitlement to benefits during the period between the request for supersedeas and the resolution of the appeal, the employer can seek reimbursement from the Supersedeas Fund.

Hence, it is sophistic to toll the thirty-day time period when an application for supersedeas is pending, because if the supersedeas is granted, it will not relate back to the date upon which the application was filed. While instinctively it seems unfair to penalize an employer for following the regulations promulgated by the Bureau, the problem lies in the application by the Majority of the regulations themselves. The request for supersedeas operates independently of the obligation to pay benefits and the default of that obligation.[5]

The Majority attempts to shoehorn the process for securing a supersedeas into the thirty-day grace period provided by Section 428. When unable to accomplish this, the Majority simply declares that the thirty-day period, in which to comply with the payment of benefits, is tolled pending the outcome of the supersedeas request. This is clearly inconsistent with the Act, particularly as regulations promulgated by a government entity that are inconsistent with a statute are invalid. Suburban Manor/Highland Hall Care Center v. Dep't of Pub. Welfare, 680 A.2d 867 (Pa. 1996). No matter how much appeal the Majority finds in the regulations, it is axiomatic that a statute is the law and trumps agency regulations, even properly promulgated ones.

Failure in the instant matter to follow the precise language of the statute subjects the Employer to penalties. I agree with Claimant in this regard that the regulations promulgated by the Board are merely procedural in nature and function as a guide for the litigant on the timing and submissions required as well as defining the decisional timeframe. I believe that Section 428, which penalizes an employer that utilizes self-help to suspend or terminate benefit payments, operates independently of the application for supersedeas.

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[5] This is true throughout the workers' compensation scheme. When an employer files a petition to suspend benefits, or one to modify benefits with a Section 413 request for supersedeas, the employer is not entitled to unilaterally suspend or modify benefits just because it filed a request for supersedeas until a hearing before the WCJ resolves the petition. The request there, as here, must be granted before it becomes effective.

The Majority agrees with the Board that requiring an employer to make payments required by an award without waiting for the outcome of the supersedeas request denies the employer a meaningful supersedeas review. Thus, despite the clear and unambiguous language of the Act, the Majority has implemented a temporary supersedeas pending the outcome of the application for supersedeas. The logical extension of this principle would mean that any time an employer files a request for supersedeas, it is entitled to an automatic supersedeas pending the review of its request. This procedure was invalidated in Baksalary v. Smith, 579 F. Supp. 218 (E.D. Pa. 1984). Before Baksalary, any appeal acted as an automatic supersedeas in workers' compensation cases pending a decision on the appeal. The federal court reasoned that the claimant acquired a property right in benefits on the date that the order granting benefits was filed. It then held that a Section 413 automatic supersedeas deprived the claimant of his or her property without due process of law. The General Assembly subsequently revised Section 413 to remove the automatic supersedeas on the filing of an appeal. 77 P.S. § 774, amended by the Act of June 24, 1996, P.L. 350, No. 57, § 16, effective August 22, 1996.

Employer acquired a legal duty to commence payment of benefits on June 13, 2000. It did not do so and became subject to penalties pursuant to Section 428. The request for supersedeas does not toll the payment of benefits until it is granted, but operates independently of the appeal. Accordingly, I would reverse the Order of the Commonwealth Court.