IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

EDWARD RALYEA,	)
	) C.A. No. 03A-10-002 JTV
Claimant Below -	)
Appellant,	)
	)
v.	)
	)
KF ENVIRONMENTAL TECH,	)
	)
Employer-Below,	)
Appellee.	)

Submitted: November 1, 2004
Decided: February 28, 2005

Walt F. Schmittinger, Esq., Schmittinger & Rodriguez, Dover, Delaware. Attorney for Appellant.

Scott L. Silar, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, Wilmington, Delaware. Attorney for Appellee.

Upon Consideration of Appellant's Appeal From
Decision of Industrial Accident Board
REVERSED & REMANDED

VAUGHN, President Judge

OPINION

Edward Ralyea ("the claimant") appeals a decision of the Industrial Accident Board ("the Board"), which held that he was not entitled to recover from his employer, KF Environmental Tech, ("the employer") for certain medical bills and mileage reimbursement which arise from a workplace injury. A large part of the medical bills had previously been paid by private insurance which the claimant had and for which he had paid the premiums. The Board denied recovery for these medical bills on two grounds: (1) that the claimant had not first submitted the bills to his employer before submitting them to his private insurer; and (2) that the claimant lacked standing to seek compensation for medical bills paid by the private insurer. In addition to denying the claimant's petition as to the medical bills paid by the private insurer, the Board's order had the effect of denying compensation for a small amount of medical bills which had not been paid by the private employer and a request for mileage reimbursement, items which the employer conceded were due. For the reasons which follow, I conclude that: (1) the claimant's failure to submit the medical bills to his employer before submitting them to his private insurer does not relieve the employer of liability for the amount of the medical bills; and (2) that the claimant does have standing to petition for recovery of medical bills even though they have been paid by his private insurance. The Board's decision will be reversed.

FACTS

The claimant suffered a work-related back injury on November 25, 2000, while employed by KF Environmental Tech. The employer accepted the claimant's injuries

as compensable and paid Workers' Compensation benefits. The claimant received treatment for his injury from Central Delaware Surgical Center and Dr. Glen Rowe. On the advice of Dr. Rowe, the claimant underwent surgery on April 25, 2001. He incurred a number of medical expenses related to the injury which included $12,138.55 for treatment at Kent General Hospital, $823.72 from Central Delaware Surgical Center, and mileage expenses of $114.70. The claimant's private health insurance carrier paid $9,934.09 to Kent General Hospital after the Hospital granted a discount of $1,076.92. After demands from the claimant, the employer paid the remaining balance of $1,127.54 to Kent General Hospital but refused to pay any more because those bills had already been paid by the claimant's private insurance. The employer has paid $534 of the expenses owed to Central Delaware Surgical Center and did not contest the remaining balance at the hearing before the Board. Neither did the employer contest the mileage reimbursement of $114.70. The only dispute appears to be whether the employer must reimburse the claimant for the remaining balance of $9,934.09 which was paid to Kent General Hospital by the claimant's private insurance benefits.

The claimant filed a Petition to Determine Additional Compensation Due on December 31, 2002 against the employer requesting an order for reimbursement from the employer for the above-mentioned medical expenses and mileage reimbursement. The claimant claims he is due $12,962 under 19 *Del. C.* § 2322 because he paid premiums for his private health insurance and the employer has not paid his medical

bills as is its duty under that statute.[1] The Board held a hearing on September 24, 2003. The Board's decision, dated October 7, 2003, held that the claimant could not recover the amounts paid by his private insurer for the medical costs he incurred. The Board found that the claimant had "failed to present evidence that he requested the employer provide medical services, and that the employer refused the request, before he used his private medical insurer to cover the injury[;]" and that the claimant consequently failed to meet the statutory provisions of 19 *Del. C.* § 2322(b).[2] The Board held that this failure prevented the claimant from recovering from the employer the expenses paid by the claimant's private insurance carrier. The Board also held that the claimant did not have standing to request reimbursement of money paid by his insurance company because such a holding would allow the claimant to recover a cost he did not incur.[3]

STANDARD OF REVIEW

The appropriate standard for the Superior Court in reviewing an appeal from the Industrial Accident Board is whether the Board's decision is supported by substantial evidence and is free from legal error.[4] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a

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[1] Tr. Ralyea, IAB Hearing No. 1190921, at 8.

[2] *Ralyea v. KF Environmental Tech*, IAB Hearing No. 1190921 (Sept. 24, 2003), at 3-4.

[3] *Id.* at 5.

[4] *Histed v. E.I. duPont de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993).

conclusion.[5] The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.[6] It merely determines whether the evidence is legally adequate to support the Board's factual findings.[7] The court's review of questions of law on appeal is *de novo*.[8]

DISCUSSION

I. The Collateral Source Rule

The Board's decision held that the claimant did not have standing to request additional payment from the employer because the claimant's medical expenses had already been partially paid by the claimant's private insurance carrier and the employer had paid the balance of the bills. The Board reasoned that "the only dispute involves two private insurers in a contract matter from which claimant has no real interest."[9] The Board also expressed concern about the possibility of duplicate recovery if the employer is required to reimburse the claimant for the medical bills.

Under the "firmly embedded"[10] collateral source rule, the Board should not

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[5] *Oceanport Ind., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994) (citing *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. Ct. 1986), *appeal dismissed*, 515 A.2d 397 (Del. 1986).

[6] *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

[7] 29 *Del. C.* §10142(d).

[8] *In re Beattie*, 180 A.2d 741, 744 (Del. Super. Ct. 1962).

[9] *Ralyea v. KF Environmental Tech*, IAB Hearing No. 1190921 (Sept. 24, 2003), at 4.

[10] *Yarrington v. Thornburg*, 205 A.2d 1, 2 (Del. 1964).

consider secondary sources beyond workers' compensation benefits if the employee has independently contracted for those additional benefits.[11] In *Porter v. Insignia Management Group*[12] the court held that an employer was not entitled to an offset merely because some of the medical bills had been paid by Medicare and noted that the Medicare payments were "entirely irrelevant to the decisions of the Board and this Court."[13] The court further held that, because the employer "did not have anything to do with the Medicare payments," the employer had not met its burden to provide medical services to the injured employee.[14] The Delaware Supreme Court has held that payments made by an employee's underinsured motorist insurer did not discharge the employer's duty to pay the employee's full medical bills resulting from a work-related automobile accident.[15] The Supreme Court held that the employer was not entitled to an offset for any payments made by the employee's private insurance carrier because the employee, not the employer, had paid for the coverage.[16]

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[11] *See, e.g. Showell v. Mountaire Farms, Inc.*, 2002 WL 31818542 (Del. Super.) *aff'd*, 836 A.2d 514 (Del. 2003); *Porter v. Insignia Management Group*, 2003 WL 22455316 (Del. Super.) *appeal dismissed*, 836 A.2d 514 (Del. 2003); *State v. Calhoun*, 634 A.2d 335 (Del. 1993).

[12] 2003 WL 22455316 (Del. Super.).

[13] *Id.* at *4.

[14] *Id.*

[15] *Adams v. Delmarva Power & Light, Co.*, 575 A.2d 1103 (Del. 1990).

[16] *Adams*, 575 A.2d at 1107-08 ("The Superior Court erred, as a matter of law, in ruling that the public policy of Delaware prohibits a risk-averse insured from contracting for such additional recovery.").

An exception to this collateral source rule is that "an employee cannot secure double recovery for a single loss where both sources of recovery emanate from the employer."[17] The claimant testified at the hearing that he obtained health insurance at his own expense. The employer did not contend that it paid for or otherwise provided the claimant's private health insurance.

The relative rights and obligations between the claimant and his private insurance company, and any obligation which the claimant may have to reimburse the private insurer for amounts recovered from the employer, are not a defense to the employer's obligation to pay the claimant medical expenses arising from a work-related injury.[18]

II. The Notice Requirement of § 2322(b)

The Board also found that the employer had not met the requirements of 19 *Del. C.* § 2322(b) because he did not first request medical treatment from the employer before seeking treatment on his own.[19] Section 2322(b) permits the

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[17] *State v. Calhoun*, 634 A.2d 335, 338 (Del. 1993) (citing *Guy J. Johnson Transp. Co. v. Dunkle*, 541 A.2d 551 (Del. 1988)).

[18] *See Showell v. Mountaire Farms, Inc.*, 2002 WL 31818542, at *6 (Del. Super.), *aff'd*, 836 A.2d 514 (Del. 2003) ("[T]he Board exceeded its jurisdiction in considering the relative subrogation rights of the parties in reaching its determination that Claimant was not entitled to reimbursement for medical expenses.").

[19] 19 *Del. C.* § 2322(b) provides:

> If the employer, upon application made to the employer, refuses to furnish the services, medicines and supplies mentioned in subsection (a) of this section, the employee may procure the same and shall receive from the employer the reasonable cost thereof within the above limitations.

employee to seek medical treatment on his own only after the employer "upon application made to the employer, refuses to furnish the services."[20] The language of Section 2322(b) states the general principle that "the employee should ordinarily not incur medical expenses without first giving the employer a reasonable opportunity to furnish such services, and an employee who does so will be liable for that expense."[21] The purpose behind this notice requirement is to protect the employer against unreasonable charges and possible fraudulent claims.[22] The employer must have "some knowledge of accompanying facts connecting the injury or illness with the employment, and indicating to a reasonably conscientious manager that the case might involve a potential compensation claim."[23] The employee need not give formal notice in order to recover as long as the employer has "sufficient knowledge of the injury."[24] Once the employee has "furnished the employer with the facts of the

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[20] *Id.*

[21] 5 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law § 94.02[3] (2004). *See also* 3 Modern Workers Compensation § 321:18 ("The employer generally is not responsible for the cost of treatment if the employee obtains his or her own physician without prior employer approval.").

[22] *Collins & Ryan v. Hudson*, 75 A.2d 261, 264 (Del. Super. Ct. 1950); *McCormick Transp. Co. v. Barone*, 89 A.2d 160 (Del. Super. Ct. 1952), *aff'd*, 135 A.2d 140 (Del. 1957).

[23] 3 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law § 126.03[1][b] (2001).

[24] 5 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law § 94.02[4][a] (2004).

injury" the employer must then instruct the employee on how to seek treatment.[25]

Section 2322(b) was part of the original workers' compensation statute which required the employer to pay the employee's medical expenses during only the first 30 days after the accident, and provided that upon the employer's refusal to do so, the employee could obtain medical treatment and recover the cost thereof from the employer. The Board, upon application, was authorized to require the employer to furnish medical treatment for an additional period of time. Section 2322(b) does not expressly say that a claimant who fails to obtain a prior refusal from the employer is barred from recovering for reasonable and necessary medical treatment. Here the employer was aware of the work-related injury and had paid some workers' compensation benefits. I have carefully reviewed the record below, including the arguments of counsel for the employer, and I find nothing to indicate that the reasonableness of the medical expenses or their relationship to the compensable injury was in question. I think that where the record shows that the employer was aware that a work-related injury had occurred, and the employer relies upon section 2322(b) as a basis for refusing to pay for the employee's treatment, the employer should identify some prejudice, or some knowing failure of the employee to follow company policy, or some other circumstances sufficient to justify relieving it of the obligation to pay for the employee's medical treatment. No such prejudice or other circumstances are alleged here, and I find that on the record in this case, Section 2322(b) is not a defense to the claimant's petition.

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[25] *Id.* at § 94.02[4][b].

CONCLUSION

For the foregoing reasons, the decision of the Board is ***reversed***, and the case is remanded to the Board for further proceedings consistent with this opinion.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.
President Judge

oc: Prothonotary
cc: Order Distribution
File