

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

ROBERT D. BARKLEY,)	
)	
Plaintiff,)	
)	
v.)	C. A. No: 04C-10-024 RBY
)	
JOHNSON CONTROLS, INC.,)	
KEMPER INSURANCE GROUP, INC.,)	
and AMERICAN MOTORISTS)	
INSURANCE CO.,)	
)	
Defendants.)	

Submitted: July 8, 2005
Decided: August 18, 2005

Walt F. Schmittinger, Esquire of Schmittinger & Rodriguez, P.A., Dover,
Delaware for Plaintiff.

Anthony M. Frabizzio, Esquire of Heckler & Frabizzio, Wilmington, Delaware
for Defendants.

OPINION

**UPON REVIEW OF CROSS-MOTIONS
FOR SUMMARY JUDGMENT
*PLAINTIFF' S MOTION GRANTED
DEFENDANTS' MOTION DENIED***

Young, J.

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Before the Court are Cross-Motions for Summary Judgment. Pursuant to Superior Court Rule, this will be taken as the equivalent of a stipulation for decision on the merits based on the record submitted with the motions and arguments. From the submissions of the parties it appears that:

FACTS

These Cross-Motions for Summary Judgment arise from a complicated procedural history. On January 18, 2002, the Industrial Accident Board (“ IAB” or “ Board”) issued a decision denying Robert Barkley’ s (“ Plaintiff”) claim for recurrence of total disability and related medical expenses. The Board found that an intervening injury had caused Plaintiff’ s recurrence of symptoms and need for surgery. Plaintiff appealed the decision to the Superior Court.¹ The Superior Court held, in a decision dated January 27, 2003, that the Board had incorrectly applied the rule of successive carrier cases, instead of the rule of “ direct and natural consequences;” and remanded the case to the Board for a decision based on the correct legal standard.² After a remand hearing, the IAB issued a decision on August 11, 2003 awarding Plaintiff disability benefits.

On October 22, 2003, the Superior Court issued an Order awarding Plaintiff attorney’ s fees. On November 17, 2003, Johnson Controls, Inc. (“ Johnson Controls”) appealed all decisions of the Superior Court to the Delaware Supreme

¹ C.A. No. 02A-01-003.

² *Barkley v. Johnson Controls*, 2003 Del. Super. LEXIS 21.

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Court. Johnson Controls filed a Motion for Stay of Judgment in Superior Court on December 19, 2003.

In response to a remand order from the Supreme Court the Superior Court issued a Report of Findings on Remand on June 1, 2004, holding that Johnson Controls had not filed a timely notice of appeal to the Superior Court from the IAB' s August 11, 2003 decision.³ The Superior Court also held that a valid appeal of the IAB' s August 11, 2003 decision was necessary to preserve the right to appeal the Superior Court' s January 27, 2003 remand order.⁴ The Court concluded, however, that a timely appeal of the IAB' s August 11, 2003 decision was not necessary to preserve Johnson Controls' s right to appeal the IAB' s October 22, 2003 award of attorney' s fees.⁵

On June 2, 2004, the record was returned to the Supreme Court. Various pleadings were filed and proceeded contemporaneously in the courts. On June 18, 2004, the Superior Court denied Johnson Controls' Motion for Stay of Judgment. After a Motion for Reargument, which the Superior Court denied, Johnson Controls filed a Motion for Reargument for Stay of Judgment in the Supreme Court. On September 28, 2004, the Delaware Supreme Court issued an order dismissing

³ See *Johnson Controls, Inc. v. Barkley*, Del. Super., C.A. No. 02A-01-003, Vaughn, J. (June 1, 2004) (REPORT OF FINDINGS ON REMAND), at 4.

⁴ *Id.* at 6-7.

⁵ *Id.* at 9.

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Johnson Controls' s appeal based on lack of jurisdiction.⁶ Johnson Controls paid the total due to Plaintiff for Workers' Compensation benefits on October 6, 2004. On October 15, 2004, the plaintiff filed a complaint against Johnson Controls and its worker' s compensation carriers⁷ alleging that Johnson Controls failed to make timely payment of both disability benefits and attorney' s fees, demanding liquidated damages under *Huffman v. C.C. Oliphant & Son, Inc.*⁸ for failure to make any payments for more than 30 days after demands were sent.

Plaintiff now argues that Johnson Controls failed to file a timely appeal of the IAB' s August 11, 2003 decision. Plaintiff asserts that this failure to file a timely appeal rendered the IAB' s decision of August 11, 2003 final and binding as of the expiration of the appeal period on September 10, 2003 (30 days after the IAB' s decision). Plaintiff further asserts that, because Johnson Controls failed to obtain a stay of judgment while the Supreme Court appeal was pending, the Superior Court' s October 22, 2003 order awarding attorney' s fees was also final and binding as of the date the appeal period ran.

Johnson Controls argues that it made prompt payment once all the appeals had been resolved by the Supreme Court' s decision on September 28, 2004. Further, Johnson Controls contends that its payment of benefits on October 6, 2004 was well

⁶ 2004 Del. LEXIS 435.

⁷ These defendants will be referred to herein as "Johnson Controls" for ease of reference.

⁸ 432 A.2d 1207 (Del. 1981).

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within 30 days of the Supreme Court's final decision. Hence, it was under no obligation to make payments until that time. Johnson Controls also asserts the defense of accord and satisfaction based on Plaintiff's acceptance of payment of benefits on October 6, 2004.

In response, the employer filed a motion to dismiss for failure to state a claim upon which relief could be granted. That motion to dismiss was denied.

STANDARD OF REVIEW

Summary judgment is appropriate if the record shows there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law.⁹ The facts must be viewed in the light most favorable to the non-moving party.¹⁰ Summary judgment may not be granted if the record indicates a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law to the circumstances.¹¹ If the facts permit a reasonable person to draw but one inference, the question becomes one for decision as a matter of law.¹²

DISCUSSION

The parties have stipulated, by their joint request to submit Cross-Motions for

⁹ Super. Ct. Civ. R. 56(c).

¹⁰ *Guy v. Judicial Nominating Comm'n*, 659 A.2d 777, 780 (Del. Super. Ct. 1995).

¹¹ *Ebersole v. Lowengrub*, 180 A.2d 467, 468-69 (Del. 1962).

¹² *Wootten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).

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Summary Judgment, that there is no genuine issue of material fact in this matter. The remaining legal questions are thus ripe for decision as a matter of law under summary judgment.¹³

Plaintiff's Complaint and Motion for Summary Judgment contend that both the IAB's decision on remand of August 11, 2003 and October 11, 2003 award of attorney's fees were final and enforceable. Plaintiff further asserts that Johnson Controls failed to make timely payment of these awards; and that he is, therefore, entitled to liquidated damages.

The August 11 Award of Benefits

The first issue to be decided is when the IAB's August 11, 2003 award of benefits became enforceable. While Johnson Controls argues at great length about when the IAB's order became "final," the Superior Court has already decided that issue specifically in this case. The Superior Court's "Report of Findings on Remand" from June 1, 2004, stated very clearly that Johnson Controls did not file a timely appeal of the IAB's August 11, 2003 decision, because no such appeal was filed until September 12, 2003.¹⁴ The court held that, therefore, "[s]ince Johnson Controls did not file a valid appeal from the IAB's August 11 decision, it became final and conclusive between the parties when the appeal time expired at the end of

¹³ *Id.*

¹⁴ *See Johnson Controls, Inc. v. Barkley*, Del. Super., C.A. No. 02A-01-003, Vaughn, J. (June 1, 2004) (REPORT OF FINDINGS ON REMAND).

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30 days.”¹⁵

Accordingly, the benefits payments became due when the appeals period expired. Under *Huffman* there is a penalty for non-payment from 30 days after the demand is made. *Huffman* stands for the proposition that, if the employer defaults on payment 30 days after the claimant makes a demand for the payment of any amount under Title 19 Chapter 23 of the Delaware Code, the claimant may recover that amount just as wages are collectible.¹⁶ No matter what calculation the Court uses, more than 30 days elapsed after Plaintiff’s demand for payment of the disability benefits, because no payments were made at all until October 6, 2004. Plaintiff is therefore entitled to *Huffman* damages for the failure to make the benefits payments to Plaintiff.

The October 22, 2003 Award of Attorney’s Fees

Johnson Controls also contends that no payments of attorney’s fees were due from the Superior Court’s October 22, 2003 decision, because there were ongoing appeals until the Supreme Court’s decision on September 28, 2004. The Superior Court, however, declined to grant a stay of either the IAB’s August 11, 2003 award of benefits or the Superior Court’s October 22, 2003 award of attorney’s fees

¹⁵ *Id.* at 6.

¹⁶ *Huffman v. C.C. Oliphant & Son, Inc.*, 432 A.2d 1207, 1210 (Del. 1981).

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during the pendency of the Supreme Court appeal.¹⁷ The pending appeal to the Supreme Court was also eventually dismissed for lack of jurisdiction, because Johnson Controls failed to file a timely appeal of the Board' s decision on remand.¹⁸

Supreme Court Rule 32 provides that a motion for stay must be filed in the trial court in the first instance.¹⁹ The trial court must rule on the initial motion, which may be granted or denied in the Court' s discretion.²⁰ Without a stay, or an injunction pending appeal, a judgment from the trial court is enforceable against the party taking the appeal.²¹

Because Johnson Controls failed to file a timely appeal of the Board' s decision on remand, no appeal to the Delaware Supreme Court was available for either the Board' s order on remand or the Superior Court' s award of attorney' s fees.²² Johnson Controls also failed to obtain a stay of the Superior Court' s award of attorney' s fees from October 22, 2003. The Superior Court' s award of

¹⁷ See *Johnson Controls, Inc. v. Barkley*, Del. Super., C.A. No. 02A-01-003, Vaughn, J. (June 18, 2004) (Letter Op.).

¹⁸ *Johnson Controls, Inc. v. Barkley*, 2004 Del. LEXIS 435.

¹⁹ Supr. Ct. R. 32. See also Del. Const. art. IV, § 24.

²⁰ *Villabona v. Board of Medical Practice of Delaware*, 2004 Del. Super. LEXIS 220, at *3.

²¹ *Schmidt v. Schmidt*, 610 A.2d 1374, 1376 (Del. 1992).

²² *Johnson Controls, Inc. v. Barkley*, 2004 Del. LEXIS 435, at *7-8.

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attorney's fees was, therefore, enforceable as of the date of the award.²³ This award becomes part of the IAB's final judgment,²⁴ and may be demanded and collected by Plaintiff under the Wage Payment and Collection Act.²⁵

The Defense of Accord and Satisfaction

Johnson Controls also argues that, by accepting payment of the disability benefits on October 6, 2004, Plaintiff waived his entitlement to payment of any additional damages. The defense of accord and satisfaction is generally not available in the context of workers' compensation. Further, no such agreement to waive rights to compensation awarded by the IAB is valid, unless specifically approved by the IAB.²⁶

²³ See *Pollard v. The Placers, Inc.*, 692 A.2d 879, 881 (Del. 1997), *aff'd*, 703 A.2d 1211 (Del. 1997) (“[Plaintiff’s] entitlement to an award of counsel fees became fixed as of the date of the Superior Court award. If the award is eventually sustained, or not further contested, it is subject to payment with interest accrued from the date of the award.”).

²⁴ 19 *Del. C.* § 2350(f) (“Such fee shall be taxed in the costs and become a part of the final judgment in the cause and may be recovered against the employer and the employer’s insurance carrier”). See also *Pollard v. The Placers, Inc.*, 692 A.2d 879, 881 (Del. 1997). Attorney’s fees are “complementary to” the underlying IAB award, and become part of the final judgment under 19 *Del. C.* §2350(f).

²⁵ 19 *Del. C.* §§ 1113(a), 2357.

²⁶ See 19 *Del. C.* §2305 (“No agreement, rule, regulation or other device shall in any manner operate to relieve any employer or employee in whole or in part from any liability created by the chapter, except as specified in this chapter.”). See also *Kelley v. ILC Dover, Inc.*, 787 A.2d 751, 756 (Del. Super. Ct. 2001).

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CONCLUSION

Therefore, in light of the Superior Court' s previous decisions determining that no valid appeal was filed from the IAB' s August 11, 2003 decision and the Superior Court' s further refusal to grant a stay of its October 22, 2003 award of attorney' s fees, Plaintiff is entitled to payment of the disability benefits and the attorney' s fees as well as interest at the legal rate. Accordingly, Plaintiff' s Motion for Summary Judgment is GRANTED. A hearing to determine damages will be scheduled, if the Parties cannot resolve that issue.

Pursuant to the foregoing analysis, Johnson Controls' s Motion for Summary Judgment is DENIED.

SO ORDERED.

Judge

oc: Prothonotary
cc: Counsel
Opinion distribution
Notebook