

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHNSON CONTROLS,	§	
INC., KEMPER INSURANCE	§	No. 157, 2006
GROUP, INC., and AMERICAN	§	
MOTORISTS INSURANCE CO.,	§	
	§	
Defendants Below,	§	Court Below: Superior Court
Appellants,	§	of the State of Delaware in and
	§	for Kent County
v.	§	
	§	
ROBERT D. BARKLEY,	§	No. 04C-10-024
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: August 3, 2006
Decided: November 1, 2006

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

ORDER

(1) Defendants-Appellants Johnson Controls, Inc., Kemper Insurance Group, Inc., and American Motorists Insurance Co. appeal the Superior Court's summary judgment against them awarding liquidated damages, costs and attorney's fees and interest for failure to pay timely workers' compensation benefits. They contend that there was no obligation to pay benefits during the appeals in this case, even though the initial appeal was untimely, and that the Superior Court erred when it made an award to Claimant under *Huffman v. C.C.*

*Oliphant & Son.*¹ The central issue is whether the Superior Court correctly decided that Defendants could not withhold payment of attorney’s fees to the Plaintiff while an untimely appeal of that award was pending. We agree with the Superior Court and affirm.

(2) The following is a brief summary of the facts. Initially, Claimant was unsuccessful before the Industrial Accident Board (“Board”). Claimant appealed to the Superior Court, which on January 27, 2003, remanded this matter to the Board to apply a different rule of law. On August 11, 2003, the Board decided in favor of the Claimant. Defendants filed an untimely appeal of that decision.²

(3) On October 22, 2003, the Superior Court awarded Claimant attorney’s fees based on 19 *Del. C.* § 2350(f) because Claimant was successful on appeal.³ Rather than pay, Defendants appealed the Superior Court’s award of attorney’s fees (but not the award on the underlying disability claim) to this Court on November 17, 2003. On March 1, 2004, this Court remanded the matter to the Superior Court.⁴ On June 1, 2004, the Superior Court clarified that because

¹ 432 A.2d 1207 (Del. 1981).

² Defendant repeatedly contends it appealed that decision on September 12, 2003 in the Superior Court, but the Superior Court expressly ruled that the deadline had been September 10 and Defendant had missed the deadline to file an appeal. *Johnson Controls, Inc. v. Barkley*, Del. Super., C.A. No. 02A-01-003, Vaughn, R.J. (June 1, 2004) (Report of Findings on Remand).

³ *Barkley v. Johnson Controls, Inc.*, Del. Super, C.A. No. 02A-01-003, Vaughn, R.J. (Oct. 22, 2003) (Order).

⁴ This Court remanded to the Superior Court and asked whether (1) Defendant timely appealed the IAB’s decision, (2) the present appeal was interlocutory, and (3) Defendant was required to

Defendants did not file a timely appeal of the Boards's August 11, 2003 decision, the award became final and conclusive between the parties and could not be attacked directly or collaterally.⁵ The Superior Court also clarified in its June 1, 2004 Report that the Defendants could appeal the Court's October 22, 2003 award of fees as a separate issue and that Defendants November 17, 2003 appeal was timely for this purpose.⁶

(4) On September 28, 2004, this Court dismissed Defendants' appeal for lack of jurisdiction because the issue of attorney's fees was interlocutory.⁷ Defendants paid Claimant the benefits awarded by the Board following this Court's September 28, 2004 Order. Claimant then filed his *Huffman* claim against Defendants in the Superior Court for damages due upon the failure to make payments for more than 30 days after demands were made. On cross-motions for

timely appeal the IAB decision to preserve its right to appeal the award of attorney's fees. *Johnson Controls, Inc. v. Barkley*, Del. Supr., No. 556, 2003, Berger, J. (March 1, 2004) (Order).

⁵ *Johnson Controls, Inc. v. Barkley*, Del. Super., C.A. No. 02A-01-003, Vaughn, R.J. (June 1, 2004) (Report of Findings on Remand).

⁶ The Superior Court suggested that in the future:

[A] party wishing to appeal a Superior Court order awarding attorney's fees should . . . file an appropriate motion, before or after the period for appealing the IAB decision on remand expires, asking the Superior Court to enter a final judgment incorporating the award of attorney's fees. Such a motion would serve the purpose of (1) filling in the procedural "gap" which occurs after a case is remanded from the Superior Court to the IAB and (2) verifying that the award of attorney's fees is no longer interlocutory and that the Superior Court has "declared its intention that the order is the court's final act in a case." *Id.*

⁷ *Johnson Controls, Inc. v. Barkley*, Del. Supr., No. 556, 2003, Berger, J. (Sept. 28, 2004) (Order) (citing 19 Del. C. § 2350(f); *Pollard v. The Placers, Inc.*, 692 A.2d 879, 881 (Del. 1997)).

summary judgment, the Superior Court granted judgment in favor of Claimant and against Defendants.

(5) In this appeal, Defendants make several claims. All reiterate Defendants' contention that the Superior Court should not have awarded attorney's fees for its refusal to pay the Board's award until after the Supreme Court dismissed its appeal on September 28, 2004. We review the grant of summary judgment *de novo*.⁸

(6) Defendants' first claim is that "there were appropriate appeals filed in the Courts, that appellate Courts did retain jurisdiction and that until this Honorable Court issued its Final Order on September 28, 2004 denying all arguments, there was no Final Order for which payment was due so that any failure to issue payment prior to that order is an inappropriate basis for an award of *Huffman* damages."

(7) This Court recognized in *Huffman v. C. C. Oliphant & Son*⁹ that the Delaware Code allows an employee-plaintiff to recover liquidated damages,¹⁰ costs

⁸ *Pike Creek Chiropractic Ctr., P.A. v. Robinson*, 637 A.2d 418, 420 (Del. 1994).

⁹ 432 A.2d 1207, 1210 (Del. 1981).

¹⁰ 19 *Del. C.* § 1103(b) provides:

If an employer, without any reasonable grounds for dispute, fails to pay an employee wages, as required under this chapter, the employer shall, in addition, be liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day (emphasis added).

and attorney's fees¹¹ when an employer or insurance company wrongfully withholds workers' compensation benefits.¹² The Superior Court has subject matter jurisdiction over this type of action, and the Board does not.¹³ This Court has held that the relief available to an employee under a *Huffman* claim is broader than that available from the Board.¹⁴

(8) To recover under *Huffman*, a claimant first must have a final order requiring an employer to pay.¹⁵ In *Blue Hen Lines, Inc. v. Turbitt*, this Court examined "whether an appeal from any part of an award negates the finality of the part not appealed and exempts the entire decision from a *Huffman* action."¹⁶ This Court stated:

A claimant is entitled to liquidated damages under 19 *Del. C.* § 2357 for an employer's failure to pay a workers' compensation award only

¹¹ 19 *Del. C.* § 1113(c) provides:

Any judgment entered for a plaintiff in an action brought under this section shall include an award for the costs of the action, the necessary costs of prosecution and reasonable attorney's fees, all to be paid by the defendant. (emphasis added).

¹² *Huffman*, 432 A.2d at 1210 (reversing Superior Court's ruling that the Industrial Accident Board had concurrent jurisdiction over workmen's compensation claims arising under § 2357 and Chapter 11 and stating that "in order to give effect to the provisions of § 2357, the reference in § 1113(a) to 'wages' must be construed to include claims based on unpaid workmen's compensation benefits due after proper demand therefore has been made. Section 1113(a) grants jurisdiction over such cases to 'any court of competent jurisdiction.' Clearly, this includes the Superior Court. Equally clear is the fact that the statute does not confer jurisdiction over workmen's compensation claims arising under § 2357 and Chapter 11 on the Board.").

¹³ *Huffman*, 432 A.2d at 1211; 19 *Del. C.* § 1113(a) ("A civil action to recover unpaid wages and liquidated damages may be maintained in any court of competent jurisdiction.").

¹⁴ *Huffman*, 432 A.2d at 1210-11; 19 *Del. C.* § 1103(b) (liquidated damages); 19 *Del. C.* § 1113(c) (costs, reasonable attorney's fees).

¹⁵ *Blue Hen Lines, Inc. v. Turbitt*, 787 A.2d 74, 77 (Del. 2001).

¹⁶ *Id.* at 77-78.

after: (1) the award becomes “due,” (2) the employee demands payment from the employer, and (3) the employer fails to pay the amount due within thirty days after the demand. . . . Under 19 *Del. C.* § 2349, “[a]n award of the Board, in the absence of fraud, shall be final and conclusive between the parties . . . unless within 30 days of the day the notice of the award was mailed to the parties either party appeals to the Superior Court for the county in which the injury occurred”¹⁷

This Court held that “if the notice of appeal is limited to a specific issue, the unappealed portions of the Board’s decision are deemed final, and thus ‘due,’ when the appeal period expires.”¹⁸ “[U]nappealed awards may not be revisited or modified on remand.”¹⁹

Claimants entitled to payments on unappealed awards, deemed final under the principles set forth above, may then make a *Huffman* demand for payment of the amounts due under the Board’s decision. If the employer fails to make payment within thirty days of the demand, the employer may become liable for liquidated damages as provided by statute.²⁰

(9) The corollary of this rule is that if a defendant files a timely appeal of a specific award, the plaintiff cannot use *Huffman* to coerce payment until the decision is final. As we said in *Turbitt*, “where a decision is not final and binding and the employer properly contests the employee’s entitlement to benefits, the employer may not be held liable for liquidated damages during the pendency of

¹⁷ *Id.* at 78 (citing *Hamilton v. Trivits*, 340 A.2d 178, 180 (Del. 1975)).

¹⁸ *Id.* (citing *Keeler v. Metal Masters Foodservice Equip. Co.*, 768 A.2d 979, 983 (Del. Super. 1999), *aff’d*, 755 A.2d 389 (Del. 2000) (Order).

¹⁹ *Blue Hen Lines*, 787 A.2d at 78.

²⁰ *Id.* at 78-79.

proceedings to resolve the dispute.”²¹ However, notwithstanding the “reasonable grounds for dispute” language in Section 1103 of WPCA, “an employer can be held liable [for damages] under [19 *Del. C.* § 2357] even when nonpayment of an award was not in bad faith.”²²

(10) “[A]n unappealed award is an ‘amount due’ under the statute regardless of ‘good faith objections.’”²³ Defendants did not timely appeal the Board’s August 11, 2003 decision. The Superior Court did not err when it determined that the Board’s decision was enforceable and subject to damages under *Huffman*.

(11) Defendants’ second claim states the first claim a different way. They claim that their October 22, 2003 appeal regarding attorney’s fees is sufficient to withhold compensation from the Plaintiff. Defendants contend that they filed a valid appeal from the Superior Court of its October 22, 2003 attorney’s fees decision to the Supreme Court, and therefore there was a pending appeal sufficient to withhold damages awarded by the Board and not stayed by the Superior Court. We disagree.

²¹ *Id.* at 79. However, an “employer may not unilaterally terminate the benefits, even if the employer acts in good faith.” *Id.*

²² *Nat’l Union Fire Ins. Co. v. McDougall*, 773 A.2d 388, 389 (Del. 2001) (per curiam).

²³ *Id.* (citing *McDougall*, 773 A.2d at 393).

(12) The merits of the underlying case were contained entirely within the Board's August 11, 2003 decision. Defendants missed the deadline for a timely appeal. This Court's retention of jurisdiction during its first appeal did not postpone responsibility to pay the benefits awarded by the Board. Nor did the retention of jurisdiction during a period for the Superior Court to provide a clarification to this Court create jurisdiction over a jurisdictionally defective appeal.

(13) Defendants' third claim is that they did not have to pay attorneys' fees until after the Superior Court's October 22, 2003 Order to pay attorneys' fees was final, and that the Order could not have been final until after their timely appeal of the attorneys' fees Order was dismissed by this Court. They contend that only after this Court dismissed their appeal on September 28, 2004 was the Superior Court's Order to pay attorneys' fees final, and therefore, they were not required to pay until after this Court's dismissal.

(14) The record shows that defendants filed three separate motions in the Superior Court on December 19, 2003, June 9, 2004, and June 23, 2004 requesting a stay of the Order. All of them were denied. The Superior Court said:

No valid appeal was filed in this Court from the IAB's August 11 decision. It is not at all clear that the IAB's August 11 decision has ever been brought within this Court's jurisdiction. This Court has not entered any judgment with respect to the IAB's August 11 decision. . . . [T]he first two factors [which the Court should consider in deciding whether to grant a stay] (likelihood of success and irreparable injury)

point toward denying a stay and the second two factors (harm to any other interested party and harm to public interest) do not point toward granting it.²⁴

The Superior Court refused to stay the Defendants' obligation to pay the benefits due. Nor was any stay of that order granted by this Court. Defendants argument is without merit.

(15) Fourth and finally, Defendants claim that an appeal is interlocutory until the Superior Court issues its final order in a case. They contend that this Court has jurisdiction until it rules that it does not have jurisdiction and that attorney's fees need not be paid until the Superior Court issues its final act. While this Court always has jurisdiction to say jurisdiction is lacking over the merits of an untimely appeal, that does not alter the fact that there was a final order for which payment was due. The Superior Court did not err when it made an award to Claimant under *Huffman*.

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court are **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

²⁴ *Barkley v. Johnson Controls, Inc.*, Del. Super., C.A. No. 02A-01-003, Vaughn, R.J. (June 18, 2004).