

Commonwealth Of Kentucky

Court Of Appeals

No. 1998-CA-000079-WC

CNA INSURANCE COMPANY

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. 93-52493

DAVID WINGFIELD, WAUSAU
INSURANCE COMPANY, KENTUCKY
WORKER'S COMPENSATION BOARD,
ROBERT L. WHITTAKER, Director
of Special Fund, WEHR
CONSTRUCTORS, INC., HONORABLE
JAMES L. KERR, Administrative
Law Judge

APPELLEES

OPINION
AFFIRMING

* * * * *

BEFORE: GUIDUGLI, JOHNSON, and KNOPF, Judges.

KNOPF, JUDGE: CNA Insurance Company appeals the decision of the Workers' Compensation Board which held that CNA did not have a right of reimbursement from Wausau Insurance Company for workers' compensation insurance benefits paid to the injured employee, David Wingfield.

CNA provided workers' compensation coverage for the employees of Wehr Constructors who principally worked and resided in Alabama. Wausau provided coverage for Wehr employees who

principally worked and resided in Kentucky. Wingfield worked and resided in Kentucky but was injured in Alabama. Wingfield filed a claim naming both Wausau and CNA as insurers for Wehr. CNA began paying benefits but terminated these benefits when the Kentucky Court of Appeals ruled that Kentucky had proper jurisdiction of the claim and that Wausau was obligated to pay insurance benefits.

CNA paid approximately \$146,000.00 in benefits to Wingfield. CNA filed a motion for reimbursement of these benefits from Wausau. The Administrative Law Judge entered an order requiring reimbursement. However, the Workers' Compensation Board reversed that order.

CNA argues on appeal that the Board erred because CNA paid the benefits attempting to proceed in good faith and under a reasonable belief that it was obligated to pay the benefits. However, once CNA learned that it was not obligated to pay the benefits and had mistakenly done so, that it was entitled to reimbursement. CNA cites Dodson v. Key, Ky., 508 S.W.2d 586 (1974) for support.

In Dodson and other similar cases, the insurer, which was seeking reimbursement, paid insurance benefits under a mistaken belief of coverage when in actuality the insurer was not obligated to pay insurance benefits. The Board in this case, though, held that CNA did not mistakenly pay benefits. The Board explained that under Alabama law, CNA would have been liable for payment of any benefits awarded. The Board stated:

We do not believe that the payments made by CNA under Alabama law can reasonably be deemed a "mistake." The payments made by CNA

were made in satisfaction of its obligation under Alabama law and pursuant to its contract of insurance with Wehr.

Essentially, CNA claims that the prior Kentucky Court of Appeals decision held that CNA was not obligated to pay benefits. This is a mischaracterization of the opinion. The opinion is clearly limited to holding that Kentucky's extraterritorial coverage statute applied in this case. As the Board correctly recognized, this holding means that Kentucky has proper jurisdiction of the claim and does not mean that Kentucky has sole jurisdiction of the claim. Wingfield could be eligible for benefits in more than one state.

We agree with the Board's reasoning and find no error. Thus, we affirm the opinion of the Workers' Compensation Board.

ALL CONCUR.

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