STATE OF MINNESOTA

IN SUPREME COURT

A19-0534

Workers' Compensation Court of Appeals — Hudson, J.

Damon A. Ewing,

Employee,

vs.

Filed: January 2, 2020
Office of Appellate Courts

Print Craft, Inc.,

Self-Insured Employer/Relator,

and

Gallagher Bassett Services, Inc.,

Third Party Administrator/Relator,

and

Optimal Recovery, Inc./Ann Brown, QRC,

Intervenor/Respondent,

and

Blue Cross Blue Shield of Minnesota/Blue Plus, et al.,

Intervenors.

Gina M. Uhrbom, Brown & Carlson, P.A., Minneapolis, Minnesota, for relators.

Joshua E. Borken, Law Office of Joshua Borken, Saint Paul, Minnesota, for respondent.

S Y L L A B U S

The compensation judge correctly held that the employer was not liable for rehabilitation services provided after the date by which the employee's work-related injury had resolved, thus making those services neither reasonable nor necessary.

Reversed.

O P I N I O N

HUDSON, Justice.

This appeal from the Workers' Compensation Court of Appeals (WCCA) requires that we determine whether an employer can be held liable for rehabilitation services provided after an employee's work-related injury has resolved. The compensation judge denied the qualified rehabilitation consultant's reimbursement claim for rehabilitation services provided during the period in which the employee was no longer suffering from a work-related injury. The WCCA reversed, concluding that the employer must pay for rehabilitation services until the employer files a rehabilitation request for assistance. Because we conclude that the WCCA erred by imposing liability on the employer for rehabilitation services provided after the date that the employee's injury had resolved, we reverse.

FACTS

Relator Print Craft, Inc. (Print Craft) is a commercial printer located in New Brighton. Respondent Ann Brown (Brown) is a qualified rehabilitation consultant (QRC) who provided rehabilitation services to one of Print Craft's employees, Damon

Ewing (Ewing). Brown billed for her services through her business, Optimal Recovery, Inc.

Ewing sprained his left ankle when he slipped on ice and fell while leaving work in December 2015. He first sought treatment at a local hospital, and over the months that followed, saw specialists at different clinics in the Twin Cities, in addition to several doctors at the Mayo Clinic. Ewing underwent assessments in the spring of 2016 to determine if he had developed complex regional pain syndrome (CRPS) as a result of his injury. Doctors at the Mayo Clinic concluded that Ewing did not have CRPS and that his work-related injury had resolved by no later than April 20, 2016. His primary care provider and his podiatrist, however, diagnosed him with CRPS related to the ankle injury.

Ewing first met with Brown on April 20, 2016. Brown prepared a rehabilitation consultation report after their meeting. She indicated in her report that Ewing was a "qualified employee" under Minn. R. 5220.0100, subp. 22 (2019), making him eligible for rehabilitation services. From April 20, 2016 onward, Brown attended medical appointments with Ewing and corresponded with his medical providers as well as Print Craft's insurance adjuster. Brown prepared a rehabilitation plan and submitted it to the Minnesota Department of Labor and Industry (Department) in July 2016. The plan identified the anticipated QRC services as medical management and the coordination of Ewing's return to work, with a projected completion date of August 31, 2016.

Over the summer of 2016, Ewing received further treatment for his left-ankle sprain, including physical therapy. At the beginning of August 2016, Ewing's self-reported symptoms included pain and twitching in his left arm, short-term memory loss, cognitive

difficulties, headaches, and tinnitus. Brown's progress reports show that she continued to provide medical management services for Ewing by arranging a neurology consultation to address Ewing's reported symptoms. When the insurance adjuster requested a reason for the neurology testing, Brown reported that it was necessary to "rule out concussion secondary to his fall."

In September 2016, Print Craft's insurance adjuster e-mailed Brown to inform her that the adjuster would not approve any further treatment for Ewing until the adjuster received the results of an independent medical examination of Ewing. Print Craft paid Brown's invoices up to September 8, 2016, but refused to pay for any of the services Brown provided after that point. Brown continued to provide rehabilitation services to Ewing and filed a plan amendment with the Department on October 14, 2016, extending the projected completion date to December 30, 2016. Print Craft did not submit a rehabilitation request for assistance to the Commissioner of the Department.[1]

Ewing appeared for an independent medical examination with Dr. Joel Gedan on November 7, 2016. Based on his physical examination of Ewing and review of Ewing's medical records, Dr. Gedan concluded that Ewing did not suffer from CRPS or any work-related injury resulting from his December 2015 fall other than a left-ankle sprain. Dr. Gedan identified a functional restoration program (i.e., physical therapy) as the only medical treatment that would likely improve Ewing's ankle condition.

[1] An employer or insurer who disagrees with a proposed rehabilitation plan amendment can file a request for rehabilitation assistance with the Department. Minn. R. 5220.0510, subp. 8 (2019).

Ewing filed a claim petition on November 9, 2016, asserting that he had CRPS in his left leg and that it had spread to his left arm and right shoulder. Ewing also alleged that he suffered a concussion when he fell at work, leading to tinnitus and memory and cognitive issues. Print Craft denied liability for Ewing's claimed injuries other than the left-ankle sprain. Neither the claim petition nor Print Craft's answer mentioned rehabilitation services.

Print Craft filed a Notice of Intention to Discontinue Workers' Compensation Benefits (Notice) on December 7, 2016, stating that it would no longer pay Ewing's temporary total disability benefits. Ewing objected, which led to an administrative conference before a compensation judge. On January 4, 2017, the compensation judge granted Print Craft's request to discontinue Ewing's disability benefits, finding that Ewing no longer required work restrictions related to his ankle sprain. Brown received a copy of the decision by mail. Ewing filed an objection to this order.[2]

Meanwhile, Brown continued to provide rehabilitation services to Ewing through the end of 2016 and into the beginning of 2017. She filed a second rehabilitation plan amendment in late December 2016 that extended the projected completion date to April 30, 2017. Print Craft did not file a rehabilitation request for assistance at that time.

Print Craft filed a rehabilitation request with the Commissioner on April 6, 2017. Print Craft requested termination of Ewing's rehabilitation plan, while "maintaining a

[2] A second independent medical examination, completed in January 2017, also concluded that Ewing's work-related injury was limited to the left-ankle sprain that had resolved by April 20, 2016.

denial of primary liability regarding any and all claimed body parts, other than a strain/sprain of the left ankle." Print Craft alleged that "the QRC is performing medical management only with respect to solely denied conditions." Ewing then filed a rehabilitation response with the Department and requested a hearing before a compensation judge.

After several continuances, a formal hearing occurred on April 6, 2018. The hearing consolidated Ewing's November 2016 claim petition, his February 2017 objection to the discontinuance of temporary total disability benefits, and Print Craft's request to terminate Ewing's rehabilitation plan. Brown intervened and testified at this hearing. In the interim, Brown continued to provide rehabilitation services to Ewing, filing at least two plan amendments that extended the projected completion date through July 31, 2018.

The compensation judge concluded that Ewing's work-related injury had resolved by April 20, 2016, and denied all claims for disability benefits, medical treatment, and rehabilitation services arising after that date. The judge also concluded that Ewing did not develop CRPS or "any other consequential injury" because of his work-related fall in December 2015.

Ewing did not appeal this decision. Brown, however, appealed to the Workers' Compensation Court of Appeals (WCCA), asserting that the compensation judge erred in denying her claim for reimbursement for rehabilitation services provided from September 8, 2016 to April 6, 2018, the date of the last hearing before the compensation judge. The WCCA reversed, concluding that the compensation judge "erred as a matter of law in assigning the cutoff date for [rehabilitation] services" as April 20, 2016. *Ewing v.*

Print Craft, Inc., No. WC18-6197, 2019 WL 1376844 (Minn. WCCA Mar. 12, 2019). The WCCA stated that employers must provide notice and show good cause under Minn. Stat. § 176.102, subd. 8(a) (2018) and Minn. R. 5220.0510, subp. 5 (2019) to terminate a rehabilitation plan. Therefore, the WCCA concluded, the "cutoff date for services" in this case was April 6, 2017—the day that Print Craft filed a rehabilitation request for assistance. The WCCA modified the compensation judge's order to award payment to Brown for all rehabilitation services provided through April 6, 2017. Print Craft filed a timely petition for writ of certiorari with our court.

ANALYSIS

Neither Print Craft nor Ewing appealed the compensation judge's decision, and Brown challenged only the compensation judge's decision that denied her request for reimbursement for rehabilitation services. For this reason, it is undisputed that Ewing's work-related injury had resolved as of April 20, 2016.[3] The question before us is whether the WCCA correctly concluded that Print Craft was required to show good cause to terminate Brown's rehabilitation services provided after the date that the employee's injury resolved.[4] We review de novo the WCCA's interpretation of the law on this point. *Hohlt*

[3] Brown's notice of appeal stated that she appealed from all findings the compensation judge made; her amended notice of appeal stated that the compensation judge's findings were clearly erroneous, including specifically findings that failed to hold Print Craft liable for her rehabilitation services. The only issue that Brown pursued before the WCCA and that is at issue here, however, is a legal one: whether Print Craft is liable for Brown's rehabilitation services.

[4] Print Craft argues that Brown forfeited her right to reimbursement because she did not ask the compensation judge to rule on the issue of good cause for terminating rehabilitation services, and the compensation judge made no such ruling. We disagree.

v. Univ. of Minn., 897 N.W.2d 777, 780 (Minn. 2017). Although the WCCA relied on Minn. Stat. § 176.102, subd. 8, we do not reach the WCCA's interpretation of the statute because our precedent and the WCCA's decisions control the outcome in this case.

We begin with a brief review of the Minnesota workers' compensation system and employer liability for rehabilitation services. *See generally* Minn. Stat. ch. 176 (2018); Minn. R. 5220.0100–.2960 (2019). An employer is generally liable for compensation for an employee's work-related injury. *See* Minn. Stat. § 176.021, subd. 1. Such compensation includes rehabilitation services provided to "restore the injured employee" to a job that produces "an economic status as close as possible to that the employee would have enjoyed without disability." Minn. Stat. § 176.102, subd. 1(b). Rehabilitation services include "a program of vocational rehabilitation, including medical management, designed to return an individual to work consistent with Minnesota Statutes, section 176.102, subdivision 1, paragraph (b)." Minn. R. 5220.0100, subp. 29. A QRC conducts a rehabilitation consultation to determine if an employee is a "qualified" employee and therefore eligible to receive rehabilitation services. *See* Minn. R. 5220.0130, subp. 1 ("An employee must be a qualified employee . . . before a rehabilitation plan is implemented."). The administrative rules define a qualified employee as:

We do not consider issues that were not presented below, *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988), and an argument is forfeited if the theory was "not litigated or addressed by the compensation judge and not appealed to the WCCA," *Ruether v. Mankato State Univ.*, 455 N.W.2d 475, 479 (Minn. 1990). Here, Brown's testimony and the record before the compensation judge are consistent with the theory she presented to the WCCA: that Print Craft should be liable for rehabilitation services provided "through the date the dispute was adjudicated." Accordingly, Brown did not forfeit her arguments on appeal.

> [A]n employee who, because of the effects of a work-related injury or disease, whether or not combined with the effects of a prior injury or disability:
> A. is permanently precluded or is likely to be permanently precluded from engaging in the employee's usual and customary occupation or from engaging in the job the employee held at the time of injury;
> B. cannot reasonably be expected to return to suitable gainful employment with the date-of-injury employer; and
> C. can reasonably be expected to return to suitable gainful employment through the provision of rehabilitation services, considering the treating physician's opinion of the employee's work ability.

Minn. R. 5220.0100, subp. 22. Once a rehabilitation plan is in place, employers must pay for the services administered according to that plan. Minn. Stat. § 176.102, subd. 4(a) ("If the consultation indicates that rehabilitation services are appropriate under subdivision 1, the employer shall provide the services.").

We have said, however, that an employer's liability for compensation under chapter 176 ends when an employee is no longer disabled. *See Kautz v. Setterlin Co.*, 410 N.W.2d 843, 845 (Minn. 1987) (holding that a non-disabled employee was "not entitled to compensation" beyond the date that benefits were allowed to be discontinued by administrative decision); *see also Woelfel v. Plastics, Inc.*, 371 N.W.2d 215, 218 (Minn. 1985) ("The finding that employee's disability caused by the work injury continued only through [a certain date], determined the extent of the employer-insurer's liability, and employee was not entitled to compensation after that date."). In *Kautz*, the compensation judge found that the employee had reached maximum medical improvement from a work-related injury, but ordered the employer to pay disability benefits for 90 days beyond that date. 410 N.W.2d at 844. The WCCA reversed, noting that "[i]t is inherent in the underlying purpose of workers' compensation that benefits are available only to employees

who are disabled by a work injury." *Kautz v. Setterlin Co.*, 39 Minn. Workers' Comp. Dec. 599, 601 (WCCA 1987). We agreed, explaining that "where the employee is found medically able to return to work without restrictions" and has "suffered no residual disability," it "is a matter of simple discontinuance." *Kautz*, 410 N.W.2d at 845. The employee is "not entitled to compensation" after that point because an employer's liability for compensation ends when an employee is no longer disabled by the work-related injury. *Id*.

Kautz involved employer liability for temporary total disability benefits, not rehabilitation services. Nonetheless, the principle remains the same: employers are only liable for reasonable and necessary rehabilitation services provided to a qualified employee. The WCCA seems to have adopted this principle as well. *See, e.g., Najarro v. Minn. Minerals & Aggregates, Inc.*, 69 Minn. Workers' Comp. Dec. 484, 493 (WCCA 2009) (noting that a QRC "bears the risk of an adverse determination as to primary liability and the related risk of non-payment" when there is a dispute over the employee's eligibility for services); *Rios v. Nat'l Coatings*, 62 Minn. Workers' Comp. Dec. 349, 365 (WCCA 2002) (citing *Kautz* and stating that reimbursement must be denied "[f]or any period during which the employee was, in the judge's estimation, unrestricted by his work injury"); *Quitevis v. M.W. Ettinger Transfer*, 2002 WL 31815010, at *9 (Minn. WCCA Nov. 12, 2002) (reversing an award reimbursing for QRC services provided during a time when the employee was ineligible for those services); *Trossen v. Champion Int'l*, 62 Minn. Workers' Comp. Dec. 14, 24 (WCCA 2001) (citing *Kautz* and stating that rehabilitation services are not reimbursable when "an employee is found medically able to return to work

without restrictions"); *Anthony v. Mrs. Gerry's Kitchen*, 2000 WL 979018, at *10–11 (Minn. WCCA June 26, 2000) (affirming a compensation judge's denial of reimbursement to a QRC because the rehabilitation services provided were not reasonable or necessary and the employee did not require ongoing services).

The compensation judge found that Ewing's work-related injury had resolved by April 20, 2016, and that the treatment he received thereafter, including the rehabilitation services, was not "reasonable, necessary, or causally related to the December 1, 2015 date of injury." Based on these findings, the compensation judge denied Brown's request for reimbursement of her outstanding rehabilitation bills as "not related to the December 1, 2015 date of injury."

Ewing did not appeal these findings, and Brown's appeal asserted only that the compensation judge erred as a matter of law in concluding that she was not entitled to reimbursement. Brown did not challenge the compensation judge's factual findings regarding Ewing's ineligibility for treatment after April 20, 2016, and does not assert here that those findings lack substantial evidence. Instead, she argues that an employer is liable for rehabilitation services until the employer provides notice of its intention to terminate those services. The WCCA agreed with Brown, relying in part on our decision in *Halvorson v. B&F Fastener Supply*, 901 N.W.2d 425 (Minn. 2017).

In *Halvorson*, the employee suffered several work-related injuries for which the compensation judge awarded wage-loss benefits, medical treatment costs, and rehabilitation services, paid for by the employer. *Id.* at 426–27. The employer filed a request to terminate rehabilitation services once the employee had returned to work,

asserting that the employee was no longer eligible for those services. *Id.* The compensation judge granted the request, relying on the definition of a "qualified employee" in Minn. R. 5220.0100. *Halvorson*, 901 N.W.2d at 426. The WCCA reversed, holding that the definitions section of the administrative rules does not provide a mechanism for terminating rehabilitation services. *Id.* at 427. Instead, the WCCA explained, the "good cause" standard in Minn. Stat. § 176.102, subd. 8(a), and Minn. R. 5220.0510, subp. 5, controls that decision. *Halvorson*, 901 N.W.2d at 427. We affirmed, stating that the plan-modification provision of Minn. Stat. § 176.102, subd. 8(a) "requires an employer to file a request and then make 'a showing of good cause' before terminating an employee's rehabilitation services." *Halvorson*, 901 N.W.2d at 432.

Despite its invocation of the good-cause standard, *Halvorson* does not stand for the proposition that employers remain liable for QRC services in all cases until the employer files a rehabilitation request for assistance. Although the employer in *Halvorson* paid the QRC until the compensation judge ordered an end to the rehabilitation services following a formal hearing, the compensation judge who presided at the administrative conference had previously denied the employer's request to terminate the services, which meant the employer had a continuing obligation to pay for the services. *See Halvorson v. B&F Fastener Supply*, No. WC15-5869, 2016 WL 3251720, at *3–4 (Minn. WCCA May 9, 2016). Here, in contrast, a compensation judge had already ordered an end to one category of Ewing's workers' compensation benefits, the temporary total disability benefits, following the January 2017 administrative conference.

Further, *Halvorson* does not provide a one-size-fits-all rule that governs every dispute over rehabilitation services. Critically, there was no dispute in *Halvorson* that the QRC provided rehabilitation services for admitted work-related injuries. That is not the case here. In a situation like Ewing's, where the employer contends that the QRC's services are unrelated to the compensable work-related injury (here, an ankle sprain), the employer is not obligated to follow *Halvorson*'s procedural requirements.[5] *Halvorson* does not impose a burden on the employer to show good cause to terminate rehabilitation services provided for denied conditions. *Halvorson* applies in a different situation: where (1) an employer has admitted primary liability for a work-related injury, or a compensation judge has previously ordered the employer to pay for workers' compensation benefits; and (2) the QRC provides rehabilitation services related to that compensable injury.

Nor are we persuaded by the WCCA's decision in *Parker v. University of Minnesota*, 64 Minn. Workers' Comp. Dec. 134 (WCCA 2003). The QRC in *Parker* contacted the claims adjuster assigned to the employee's workers' compensation case to request authorization to perform job-placement services under an existing rehabilitation plan. *Id.* at 137. The adjuster refused to authorize the services, and the QRC informed the adjuster in writing that she intended to provide the services irrespective of the adjuster's authorization. *Id.* Although the WCCA ultimately ruled in favor of the QRC because it

---

[5] Of course, an employer may choose to use the *Halvorson* procedure, and in fact, it may have been wise for the employer to do so here. Print Craft might have shortened a long-running dispute by simply filing a request to terminate rehabilitation services when it first notified Brown that it would not reimburse her for services provided for Ewing's disputed consequential injuries.

found that the services provided were reasonable, the court cautioned that "a QRC who continues to provide rehabilitation services during the pendency of a dispute over rehabilitation eligibility runs the risk of non-payment in the event that the employer prevails in the eventual hearing on the merits of the employee's entitlement to rehabilitation services." *Id.* at 142. But even if the employee prevails at the hearing, "the employer is only responsible for payment of those rehabilitation services to which the employee was otherwise entitled under Minn. Stat. § 176.102." *Parker*, 64 Minn. Workers' Comp. Dec., at 142.

Unlike the undisputed findings here, the QRC in *Parker* prevailed on the reimbursement claim because the employee was "eligible for rehabilitation services" and the services provided by the QRC "were reasonable and necessary." *Id.* at 140. The WCCA's acknowledgement in *Parker* that employers are only liable for "services to which the employee was otherwise entitled," *id.* at 142, reinforces our conclusion that Print Craft cannot be liable for the rehabilitation services provided by Brown *after* Ewing's injury had resolved.[6]

Moreover, nothing in *Parker* clearly states that an employer assumes absolute liability for services provided up until the date of the employer's rehabilitation request for assistance. Instead, *Parker* shows that the question of reimbursement is one for the

[6] The WCCA has stated that employers might be liable for services provided after an employee's injury resolved if the employer *expressly agreed* to the QRC's provision of those services. *See Sebion v. ADM Malting Div.*, 1997 WL 85771, at *4 n.5 (Minn. WCCA Feb. 12, 1997). There is no allegation here that the employer expressly agreed to the provision of Brown's services after September 2016.

compensation judge. The QRC assumes the risk, once a dispute arises, that the compensation judge's decision on reimbursement will not go in the QRC's favor. If the compensation judge determines that the rehabilitation services were reasonable, necessary, and provided to a qualified employee, then the QRC receives reimbursement. Here, the WCCA's decision effectively takes away that decision from the compensation judge, which is inconsistent with the reasoning of *Parker*. It is also inconsistent with the rule we announced in *Kautz*, that the employer's liability is a "simple matter of discontinuance" when the employee is no longer eligible for compensation. *Kautz*, 410 N.W.2d at 845.

Brown contends that, without a requirement for notice in the form of the employer's rehabilitation request for assistance whenever a dispute arises, QRCs will unfairly bear a risk of nonpayment.[7] Neither our precedent nor the WCCA's precedent clearly designate the date of a rehabilitation request for assistance by the employer as the bright line for when a "dispute" arises under *Parker*, and thus when the QRC has notice. Furthermore, the

[7] The WCCA has held, based on *Parker*, that QRCs bear the risk of non-payment in some cases. *See Beguhl v. Supportive Living Sols.*, No. WC17-6078, 2018 WL 524774, at *7 (Minn. WCCA Jan. 11, 2018) (quoting *Parker* and stating, "As this court has stated, the QRC takes the risk of nonpayment, but upon a showing of the need and reasonableness of the service, 'all appropriate services are compensable.' "); *Breeze v. FedEx Freight*, No. WC14-5687, 2014 WL 4491102, at *5 (Minn. WCCA Aug. 26, 2014) ("[P]ursuant to *Parker*, QRCs risk nonpayment for services provided after an employer disputes an employee's eligibility for rehabilitation assistance, if the employer ultimately prevails on that issue."); *Najarro v. Minn. Minerals & Aggregates, Inc.*, 69 Minn. Workers' Comp. Dec. 484, 493 (WCCA 2009) (applying the rule in *Parker* to hold that a QRC also bears the risk of nonpayment in a dispute over primary liability for the employee's injury); *Anderson v. Banta Catalog*, No. WC08-104, 2008 WL 2925512, at *6 (Minn. WCCA July 7, 2008) ("[O]nce the employer and insurer had denied liability for the employee's continuing rehabilitation . . . QRC Seely continued her services to the employee at her own risk.").

record demonstrates that Brown had ample notice of a dispute over rehabilitation eligibility before Print Craft filed a rehabilitation request for assistance in April 2017.

As early as September 2016, Brown knew that Print Craft denied primary liability for any injuries other than the sprain to Ewing's left ankle, and that Print Craft would not pay for any medical treatment or rehabilitation services provided for denied conditions. Not only did she have e-mails confirming Print Craft's denial of liability, Print Craft stopped paying her invoices. Brown also knew in November 2016 that Ewing was in litigation with Print Craft over his claim for additional workers' compensation benefits, when he filed a claim petition asserting that he suffered consequential injuries (an alleged concussion, memory and cognitive troubles, and CRPS in various parts of his body) due to his fall at work. In December 2016, Print Craft filed a Notice of Intention to Discontinue Ewing's benefits for the left-ankle sprain based on an independent medical examination. A compensation judge reviewed Print Craft's Notice, concluded that Ewing was no longer suffering from a work-related injury, and served a copy of that decision on Brown by mail on January 5, 2017.

In short, Brown was on notice of the dispute over Ewing's eligibility for workers' compensation benefits long before Print Craft filed a rehabilitation request for assistance in April 2017. By continuing to provide rehabilitation services rather than pursuing other options available to her, including filing her own rehabilitation request for assistance or discontinuing services,[8] she assumed the risk of non-payment. *See, e.g., Breeze v. FedEx*

[8] QRCs themselves have the ability to file a rehabilitation request for assistance "to resolve issues involving elements of a rehabilitation plan or fees for rehabilitation

Freight, No. WC14-5687, 2014 WL 4491102, at *4 (Minn. WCCA Aug. 26, 2014) ("[I]n *Parker*, we clearly indicated that a QRC has no obligation to provide services during litigation on the question of the employee's eligibility for rehabilitation services.").

Finally, Brown contends that the WCCA reached the correct decision because the administrative rules impose liability on an employer through the date of the employer's rehabilitation request for assistance. She specifically cites Minnesota Rules 5220.0410, subpart 6 and 5220.0510, subparts 2b and 2d.

Rule 5220.0410 governs the initial proposal of a rehabilitation plan.[9] It does not apply in this case because Print Craft paid for QRC Brown's services at the time she initially proposed the rehabilitation plan and lodged no objection at the time of the

---

services." Minn. R. 5220.0950, subp. 1(B). When Print Craft stopped paying her invoices in the fall of 2016, Brown could have filed a rehabilitation request for assistance to resolve the issue.

The rules also provide a withdrawal mechanism for QRCs in the event of a dispute, under subpart 7a of Minnesota Rule 5220.0510. QRCs can file a plan closure report and withdraw "after the insurer has provided written notice to the employee, the employee's attorney, the commissioner, and the [QRC] that the insurer is denying further liability for the injury for which rehabilitation services are being provided." Minn. R. 5220.0510, subp. 7a(A). They can also withdraw without filing a plan closure report "if a claim petition, objection to discontinuance, request for an administrative conference, or other document initiating litigation has been filed on the liability issue." *Id.* subp. 7a(C). All that a QRC has to do in that instance is document the withdrawal on a rehabilitation plan amendment form. *Id.* If a QRC withdraws based on a dispute over liability and the employee is otherwise eligible for rehabilitation services (i.e. the employee is a "qualified employee"), the employee can ask for a consultation to receive rehabilitation services through the Department's Rehabilitation Unit, which is paid for by the Department's special compensation fund. *See* Minn. Stat. § 176.104.

[9] *See, e.g.*, Minn. R. 5220.0410, subp. 3 ("Upon preparation of the proposed plan, and within 30 days of the first in-person contact between the assigned qualified rehabilitation consultant and the employee, the assigned qualified rehabilitation consultant shall provide to all parties a copy of the proposed rehabilitation plan.").

proposal.[10] Rule 5220.0510 governs plan amendment and closure.[11] Brown argues that subparts 2b and 2d of that rule support the WCCA's decision because they state that a party who does not object to a proposed rehabilitation plan amendment within 15 days of receipt is deemed to approve of the proposed services. We disagree. Subpart 2d of rule 5220.0510 incorporates the principle of reasonableness articulated above, and specifically authorizes the compensation judge to determine an employer's ultimate liability, stating: "The insurer is liable for *reasonable fees* for a plan amendment that is deemed approved under this subpart *until a further plan amendment is filed or ordered by the commissioner or compensation judge*." Minn. R. 5220.0510, subp. 2d (emphasis added). Furthermore, subpart 2d expressly preserves the employer's right to litigate the question of liability before the compensation judge, as was done here: "A party's failure to sign a plan amendment *shall not constitute a waiver of any right to subsequently dispute it* or to dispute whether the rehabilitation fees relative to it are *reasonable*." *Id.* (emphasis added). Instead of supporting the WCCA's rule of law, the provisions cited by Brown refute her argument.

We therefore conclude that the WCCA erred in reversing the compensation judge's decision and ordering Print Craft to pay for rehabilitation services provided after Ewing's

---

[10] Print Craft did not initially challenge Ewing's eligibility for rehabilitation services and the company does not seek to recover payments made to Brown through September 8, 2016, as Print Craft's counsel acknowledged at oral argument.

[11] *See, e.g.*, Minn. R. 5220.0510, subp. 1 ("Whenever circumstances indicate that the rehabilitation plan objectives are not likely to be achieved, proposals for plan amendment may be considered by the parties."). The rule also provides procedures for closing a rehabilitation plan. *See id.* subp. 5 (request for closure by an insurer or employee); *id.* subp. 6 (closure by the commissioner); *id.* subp. 7 (closure report by the QRC).

work-related injury resolved. We reverse the WCCA's decision and reinstate the decision of the compensation judge.

CONCLUSION

For the foregoing reasons, we reverse the decision of the Workers' Compensation Court of Appeals.

Reversed.