

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mekis Construction Corp. and	:	
BITCO National Insurance Company,	:	
Petitioners	:	
	:	
v.	:	
	:	
James L. Janocha, deceased, c/o	:	
Shelly Janocha (Workers’	:	
Compensation Appeal Board),	:	No. 916 C.D. 2020
Respondent	:	Submitted: March 5, 2021

BEFORE: HONORABLE P. KEVIN BROBSON, President Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE FIZZANO CANNON FILED: August 30, 2021

Mekis Construction Corp. (Employer) and BITCO National Insurance Company (Insurer) petition this Court for review of the August 27, 2020, decision and order of the Workers’ Compensation Appeal Board (Board) affirming the March 26, 2019, decision and order of the Workers’ Compensation Judge (WCJ). The WCJ granted the Reinstatement Petition of Shelly Janocha, the widow of James Janocha, the deceased claimant, and awarded ongoing survivors’ benefits to Ms. Janocha and her then-minor son with Mr. Janocha. Upon review, we reverse and remand for further proceedings consistent with this decision.

Procedural & Factual Background

On July 7, 2016, Mr. Janocha sustained a fatal heart attack after leaving work for the day.¹ WCJ Decision at 3; Reproduced Record (R.R.) at 18a. On July 20, 2016, Insurer's adjuster, Robert Quehl (Quehl), issued a Notice of Temporary Compensation Payable (NTCP) in which Insurer agreed to provide survivors' benefits to Ms. Janocha and her son for up to 90 days from the date of Mr. Janocha's death, or through October 5, 2016.^{2,3} *Id.* at 3; R.R. at 18a-19a, 29a-30a & 275a-76a.

Subsequently, using the Bureau of Workers' Compensation's (Bureau) Workers' Compensation Automation and Integration System's (WCAIS) Electronic Data Interchange (EDI) system,⁴ Quehl completed a September 21, 2016,

¹ The parties stipulated to findings of fact that the WCJ incorporated into his decision. WCJ Decision at 3-4 & 14-15; Reproduced Record (R.R.) at 18a-19a & 29a-30a.

² Section 406.1(d)(1) of the Workers' Compensation Act (Act), Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §§ 1-1041.4, 2501-2710, provides that if an employer is uncertain whether a claim is compensable or as to the extent of its liability, the employer may issue a Notice of Temporary Compensation Payable (NTCP) and initiate temporary compensation payments without prejudice and without admitting liability. Section 406.1, added by the Act of February 8, 1972, P.L. 25, 77 P.S. § 717.1(d)(1). If, after 90 days, the employer fails to rescind the NTCP, the NTCP converts to a Notice of Compensation Payable (NCP) and the claim is deemed accepted by the employer. 77 P.S. § 717.1(d)(6).

³ By stipulation and pursuant to Section 307 of the Act, 77 P.S. § 562, Ms. Janocha and her son were eligible for \$660.74 per week in combined survivors' benefits with her son until either son became emancipated upon reaching the age of 18 years old, or until the son reached the age of 23 years old, if he remained a full-time student, or on an ongoing basis, if the son was disabled. R.R. at 30a; *Hertz Corp. v. Workers' Comp. Appeal Bd. (Johnson)*, 724 A.2d 395, 400 (Pa. Cmwlth. 1999). Ms. Janocha would thereafter remain eligible for weekly benefits of \$561.63 until her death or remarriage. R.R. at 30a; *Hertz*, 724 A.2d at 400. To the extent Section 307 of the Act previously contained different eligibility criteria for widows and widowers, it was declared unconstitutional on equal protection grounds in *Oknefski v. Workmen's Compensation Appeal Board*, 439 A.2d 846 (Pa. Cmwlth. 1981).

⁴ WCAIS is the Bureau's web-based system for claims management and adjudication. The EDI system enables insurers, self-insured employers, and third-party claims administrators to generate and issue specific forms associated with claims management,

Subsequent Report of Injury-Upon Request (SROI-Upon Request) transaction. WCJ Decision at 3; R.R. at 18a & 271a-74a. That transaction indicated Employer's intent to rescind the NTCP and deny the claim based on lack of a causal relationship between Mr. Janocha's work and his death. *Id.* at 3; R.R. at 18a & 271a-74a. On September 27, 2016, Quehl completed a Subsequent Report of Injury-Change (SROI-Change) transaction with similar denial information and issued a Notice of Compensation Denial (NCD) indicating that benefits would no longer be paid. *Id.* at 3; R.R. at 18a & 265a-70a.

On May 28, 2017, Ms. Janocha filed a Reinstatement Petition asserting that Employer failed to properly revoke the NTCP, which then converted by law to an acceptance of the claim as if by Notice of Compensation Payable (NCP) once the 90-day period elapsed. R.R. at 1a-2a.⁵ At hearings on the matter, Quehl testified, as did Harte Pricer (Pricer), the Bureau's EDI manager, and Tamara Osler (Osler), an EDI service clerk at the relevant time.

Quehl testified that he has been a workers' compensation claims adjuster for 39 years, the past 3 with Insurer. R.R. at 76a. Employer reported Mr. Janocha's death to him on July 7, 2016, the date it occurred. *Id.* at 78a. He issued a paper NTCP on July 20, 2016, agreeing to provide survivors' benefits to Ms. Janocha

including the NCP, NTCP, Notice Stopping Temporary Compensation (NSTC), and Notice of Compensation Denial (NCD). *See* <https://www.dli.pa.gov/Businesses/Compensation/WC/claims/wcais/Pages/default.aspx> (last visited August 27, 2021).

⁵ Ms. Janocha also filed a Penalty Petition asserting that Employer's unilateral stoppage of benefits violated the Act and a Review Petition asserting that Mr. Janocha's average weekly wage and benefit amount had been miscalculated. R.R. at 1a-6a. The WCJ denied the Penalty Petition because Insurer's failure to comply with the Act was not in bad faith. The Review Petition was resolved via stipulation. Neither is at issue in this appeal. WCJ Decision at 3 & 12; R.R. at 18a & 27a.

and her son on a temporary basis for up to 90 days (through October 5, 2016) from the date of Mr. Janocha's death, during which time Quehl would investigate the claim. *Id.* at 80a-84a.

In the interim, Quehl learned from a WCAIS notice to users that as of September 16, 2016, Bureau claims management forms filed by insurers would no longer be accepted in paper form and would have to be generated through EDI. R.R. at 83a. Although EDI had been in operation since 2013, its use for all claim functions was not yet mandatory, and Quehl had continued to issue paper documents. *Id.* at 109a.

When the NTCP's October 5, 2016, deadline neared, Quehl did not have sufficient medical documentation tying Mr. Janocha's fatal heart attack to his work duties, so Quehl planned to rescind the NTCP and deny the claim. R.R. at 84a. Quehl knew that to do so, he had to complete an SROI transaction in EDI, which would allow him to generate an NCD and a Notice Stopping Temporary Compensation (NSTC), both of which are required to rescind an NTCP. *Id.* at 78a & 84a.

On September 21, 2016, Quehl completed the SROI-Upon Request transaction and indicated on it that the claim was being denied for lack of a causal relationship between Mr. Janocha's fatal heart attack and his work duties. R.R. at 89a. After doing so, Quehl checked EDI to ensure that the claim status showed the claim as being denied. *Id.* at 85a & 89a. After a few days, Quehl was not able to generate the NSTC and NCD documents in EDI, so he called the EDI helpline. *Id.* at 90a. He explained to "Tamara" that he had issued the paper NTCP in July 2016, followed by the September 21, 2016, SROI-Upon Request transaction with the denial indicated. *Id.* Although the system showed the claim as denied, Quehl told

Tamara he was unable to generate the required NSTC and NCD and asked how to do so. *Id.* The telephone explanation did not make sense to Quehl, so he followed up on September 26, 2016, with a written inquiry through EDI, posing the same question. *Id.* at 91a. The response indicated that the claim was “never in temporary claim status” in the system, so Quehl would not be able to generate an NSTC. *Id.* at 95a & 251a. Quehl did not understand this since the paper NTCP had been accepted by EDI in July 2016. *Id.* at 106a. Quehl believed a system error had occurred and did not follow up with a further EDI inquiry to determine whether the situation regarding the claim status in the system was due to something he had or had not done. *Id.* at 107a-08a.

Nevertheless, on September 27, 2016, Quehl completed the SROI-Change transaction in EDI with the same denial reason (lack of causation). R.R. at 92a. He was then able to generate an NCD, but still was unable to generate an NSTC. *Id.* at 92a, 96a & 98a. He ultimately created a paper NSTC dated September 29, 2016, and mailed it along with the NCD to Ms. Janocha, but not to the Bureau, based on the WCAIS notice and having been told that hard copies of documents would no longer be accepted by the Bureau. *Id.* at 96a & 98a. That was the last date on which Insurer made a temporary benefits payment to Ms. Janocha. *Id.* at 98a.

Pricer, the Bureau’s EDI manager, testified that EDI has been in place since 2013 as the means for adjusters to upload and generate claim documents (NCP, NTCP, NSTC, and NCD). R.R. at 148a & 151a. At first, “the expectation was that the adjuster would be submitting both the form and the accompanying EDI transaction.” *Id.* at 154a. In September 2016, to reduce duplication, the Bureau changed its policy so paper copies would no longer be accepted and the only way to generate these documents was through WCAIS. *Id.* at 153a. Pricer explained that

between 2013 and September 2016, the SROI-Upon Request transaction in WCAIS enabled an adjuster to “catch up” a “legacy claim” previously submitted by paper forms so that the system status for the claim would be current.⁶ *Id.* at 155a. The SROI-Upon Request could not be used to generate a form such as an NSTC or an NCD; it only enabled the adjuster to update a claim’s status in the system. *Id.*

Pricer explained that in WCAIS, a claim must be in “temporary status” in the system in order to generate an NSTC. R.R. at 156a & 180a. This requirement has been in place since EDI began as part of WCAIS in 2013, can only be done by the adjuster, and must be done prior to an attempt to rescind an NTCP. *Id.* at 156a. The requirement is distinct from simply uploading an NTCP as Quehl did here, which alone will not place a claim in temporary status. *Id.* at 184a. Without the corresponding SROI-Upon Request transaction, the system will not recognize the proper status or process future transactions on the claim correctly, including the ability to generate both an NSTC and an NCD to deny a claim originated via an NTCP. *Id.* at 156a & 181a.

In this matter, according to Pricer, Quehl’s July 2016 paper NTCP had been accepted when it was uploaded to WCAIS before the September 2016 transition to EDI-only submissions. R.R. at 158a. However, because Quehl never followed up after issuing the paper NTCP by placing the claim in temporary status within EDI, he could not do so retroactively once he opted to indicate Insurer’s denial when he completed the September 21, 2016, SROI-Upon Request transaction. R.R. at 186a. Subsequently, the September 27, 2016, SROI-Change transaction only allowed him to generate an NCD, but not an NSTC. *Id.* at 173a & 180a-81a. Also, because by

⁶ Pricer added that since WCAIS no longer accepts paper NTCP forms, the relevant SROI transaction now both places the claim in temporary status and enables generation of the NTCP. R.R. at 184a. As such, Pricer explained that the circumstances at issue in this matter, where the initial Bureau document was the paper NTCP issued by Quehl, can no longer occur. *Id.*

that time the system no longer accepted paper documents, Quehl could not correct the issue in the system by uploading a paper NSTC. *Id.* at 185a. Pricer stated that based on her review of this claim in EDI, specifically Quehl's failure to update the claim in the system to temporary status after issuing the paper NTCP, followed by Quehl's two SROIs indicating Insurer's aim to deny the claim, no administrative breakdown in the system had occurred. *Id.* at 176a.

Osler testified that she was an EDI service clerk during the relevant time period. R.R. at 210a. Her duties included researching and answering questions from EDI users. *Id.* She confirmed that as of September 16, 2016, claim forms could only be generated through EDI and if adjusters mailed paper forms, they would be returned to the senders. *Id.* at 212a. Osler did not specifically recall speaking to Quehl, but acknowledged that she prepared the response to his written inquiry. *Id.* at 213a-14a. She reviewed the claim and determined that based on Quehl's September 21, 2016, SROI-Upon Request transaction with a denial code, WCAIS recognized the claim as being in denied status. R.R. at 218a.

Osler explained, similarly to Pricer, that Quehl could have previously put the claim into temporary status in EDI when he uploaded and submitted his paper NTCP or by submitting an SROI that did not include a denial code after submitting his NTCP. R.R. at 222a & 225a. In either instance, Quehl would have been able to subsequently generate an NSTC by completing another SROI transaction with a denial code. *Id.* at 222a & 225a. However, because Quehl had never placed the claim in temporary status in EDI after issuing the paper NTCP, it was no longer possible after his September 21, 2016, denial SROI to restore the claim to temporary status or generate an NSTC because "there's no way [to] go backwards in the system." *Id.* at 219a-23a.

The WCJ found that while all the witnesses were credible, the testimony of Pricer and Osler showed that even before the September 2016 change in WCAIS to eliminate paper form submissions, insurers were expected to follow up paper NTCP submissions with the appropriate SROI transaction (without a denial code). WCJ Decision at 10-12; R.R. at 25a-27a. This would ensure that EDI reflected temporary status, without which an NSTC cannot be generated if the insurer subsequently decides to deny the claim and stop temporary benefits within the 90-day NTCP period. *Id.* 10-12; R.R. at 25a-27a. The WCJ thus concluded that Quehl's inability to generate an NSTC was not due to a breakdown in the system, but to Quehl's failure to ensure that the system reflected the claim as being in temporary status before he denied it by means of the September 21, 2016, SROI-Upon Request transaction. WCJ Decision at 12; R.R. at 27a.

Because the Act expressly requires proper filing with the Bureau of both an NSTC and an NCD in order to lawfully stop temporary compensation, the WCJ concluded that Insurer failed to properly rescind the NTCP and, by operation of law, once the 90-day period elapsed, the NTCP converted to full acceptance of the claim as if by NCP. WCJ Decision at 12; R.R. at 27a. The WCJ therefore granted Ms. Janocha's Reinstatement Petition and ordered Insurer to pay ongoing survivors' benefits to Ms. Janocha and her son. WCJ Order; R.R. at 28a.

Employer appealed to the Board, which issued an August 27, 2020, decision and order affirming on different grounds.⁷ Board Decision; R.R. at 42a-59a. The Board agreed with the WCJ that no administrative breakdown occurred,

⁷ The Board may affirm the decision of the WCJ for reasons other than those on which the WCJ relied. *Motor Coils MFG/WABTEC v. Workers' Comp. Appeal Bd. (Bish)*, 853 A.2d 1082, 1087 n.9 (Pa. Cmwlth. 2004), *aff'd*, 912 A.2d 212 (Pa. 2006) (citing *Long Serv. Co. v. Workmen's Comp. Appeal Bd. (Schell)*, 512 A.2d 1322 (Pa. Cmwlth. 1986)).

but focused on Quehl’s September 29, 2016, decision to mail a manually generated NSTC to Ms. Janocha but not to the Bureau. *Id.* at 12-15; R.R. at 55a-58a. The Board noted that despite the WCAIS update to users stating that paper copies of documents would not be accepted after September 16, 2016, regulations mandating that method of submission were not in place until January 28, 2017. *Id.* at 12-13; R.R. at 55a-56a. Therefore, the Board concluded, Quehl could and should have also mailed a copy of his manually generated NSTC to the Bureau. *Id.* at 13; R.R. at 56a. In the Board’s view, even though “the Bureau was not accepting mailed copies of the Bureau forms at [that] time, it did not excuse [Insurer] from establishing that it filed these forms pursuant to the applicable section of the Act.” *Id.* at 13 n.9; R.R. at 56a.

Employer now appeals to this Court.⁸

Parties’ Arguments

Employer argues that Quehl’s inability to generate an NSTC through WCAIS resulted from an administrative breakdown that greatly exceeded any minimal noncompliance by Quehl. Employer’s Br. at 20-45; Employer’s Reply Br. at 1-7. Employer avers that Quehl committed only a minor clerical error when he failed to update the claim status in WCAIS, then was thwarted by misinformation from the Bureau (Osler) when he tried to remedy the situation through the helpline call and written inquiry. Employer’s Br. at 20-45; Employer’s Reply Br. at 1-7. Employer avers that the WCJ’s grant of survivors’ benefits to Ms. Janocha (and the Board’s affirmance of same) elevated form over substance and worked a manifest

⁸ On December 16, 2020, this Court denied Employer’s application to stay its obligation to pay benefits to Ms. Janocha pending the outcome of this appeal. *Mekis Constr. Corp. v. Janocha (Workers’ Comp. Appeal Bd.)* (Pa. Cmwlth., No. 916 C.D. 2020, filed Dec. 16, 2020) (unreported).

injustice by depriving Employer of its due process right to a merits determination of its intent to contest causation regarding this claim. Employer’s Br. at 20-45; Employer’s Reply Br. at 1-7.

Ms. Janocha responds that the WCJ and the Board correctly concluded that Insurer’s failure to issue and file an NSTC was due to Quehl’s “user error” and that no breakdown had occurred at the Bureau level. Janocha’s Br. at 11-19. Ms. Janocha points out that Insurer, with its extensive resources, including an experienced adjuster (Quehl), may not avoid the consequences of its negligence in failing to ensure that this claim was properly set up in WCAIS. *Id.* As such, Ms. Janocha maintains that the WCJ did not err in granting the Reinstatement Petition and the Board did not err in affirming that determination. *Id.*

Discussion⁹

Section 406.1 of the Act states that if the employer decides to stop temporary payments pursuant to an NTCP, an NSTC “shall be sent to the claimant *and a copy filed with the department*, but in no event shall this notice be sent or filed later than five (5) days after the last payment.” 77 P.S. § 717.1(d)(5)(i) (emphasis added); 34 Pa. Code § 121.17(d) (“If temporary payments made under [an NTCP] are stopped, the employer *shall file . . .* [an NSTC and an NCD] within 5 days of the last payment and within the 90-day temporary compensation payable period.”) (emphasis added). If the employer fails to file an NSTC with the Bureau during the 90-day NTCP period, “the employer shall be deemed to have admitted liability and

⁹ In workers’ compensation appeals, this Court’s “scope of review is limited to determining whether constitutional rights have been violated, whether an error of law was committed and whether necessary findings of fact are supported by substantial evidence.” *Morocho v. Workers’ Comp. Appeal Bd. (Home Equity Renovations, Inc.)*, 167 A.3d 855, 858 n.4 (Pa. Cmwlth. 2017).

the notice of temporary compensation payable shall be converted to a notice of compensation payable.” 77 P.S. § 717.1(d)(6); *Hurst v. Workers’ Comp. Appeal Bd. (Preston Trucking Co.)*, 823 A.2d 1052, 1058-59 (Pa. Cmwlth. 2003).

Section 111.3 of the Bureau’s regulations defines a “filing” as complete upon delivery either in person, through electronic submission (WCAIS), or by mail. 34 Pa. Code § 111.3. Section 121.3 states: “Forms must be in the format prescribed by the Bureau. All references to forms mean paper forms or an electronic format prescribed by the Bureau.” 34 Pa. Code § 121.3(a). These provisions have not been expressly amended. However, the aspects of the regulations formerly permitting submission of paper forms via mail were effectively superseded as of January 28, 2017, when the Bureau adopted Section 123.901 of its regulations, 34 Pa. Code § 123.901. Section 123.901(b) states that going forward, “the format prescribed by the Bureau” for filing and service on the Department of the NSTC form (along with the NCP, NTCP, and NCD forms) will be through WCAIS and that these forms “may not be submitted to the Department in any other format.” 34 Pa. Code § 123.901(b). Thus, the Bureau’s purported change of policy in September 2016 to require electronic submission of forms predated the enabling regulation by several months.

Our research reveals no previous decisions of this Court addressing claims of administrative breakdown under analogous circumstances in a workers’ compensation matter. Most cases involving assertions of administrative breakdown pertain to late-filed appeals, in which there are jurisdictional considerations not at issue here. *See, e.g., Seropian v. State Ethics Comm’n*, 20 A.3d 534 (Pa. Cmwlth. 2011). However, the principles underlying these cases are instructive here, where Insurer asserts that misinformation from Bureau personnel prevented Quehl from mailing his hand-generated NSTC to the Bureau before the October 5, 2016,

expiration of the NTCP. This happened at a time when the Bureau's regulations still expressly allowed him to do so. Similar to a lost appeal, the WCJ's determination that as a result of Quehl's actions the NTCP converted to full acceptance of the claim deprived Insurer of its right to contest the merits of its denial before the WCJ.

In that regard, the circumstances here are analogous to those in *Union Electric Corporation v. Board of Property Assessment, Appeals & Review of Allegheny County*, 746 A.2d 581 (Pa. 2000), in which the county property assessment board extended a deadline for filing appeals beyond that set forth in the relevant statute. *Id.* at 582. The board had no legal authority to do so, but the property owners relied on the board's misinformation. *Id.* at 583. When the matter reached the trial court, the property owners' appeals were quashed on the basis that their appeals had been untimely, and this Court affirmed. *Id.* The Supreme Court reversed, explaining that when an administrative agency "cloaked with the apparent authority" to mandate procedures misleads a litigant who reasonably relies on the agency's misinformation, and that misinformation conflicts with the agency's own substantive law (or, as here, regulations), an administrative breakdown has occurred and relief may be warranted. *Id.* at 584.

In *Seropian*, the State Ethics Commission found the petitioner committed a public employee ethics violation by using his work computer for personal activities. 20 A.3d at 536. The Commission asserted that the petitioner's appeal from its order was untimely because his request for reconsideration of the order had not suspended the order's finality or the tolling of its 30-day appeal period. *Id.* at 538. We disagreed and noted that where procedures supplied by an administrative agency mislead a party and result in an incorrect filing, there may be adequate grounds for relief without a showing of fraudulent intent on the part of the

agency. *Id.* at 539-40. The Commission’s direct instructions to the petitioner regarding his ability to request reconsideration and then to appeal were confusing and inconsistent. *Id.* at 540-41. The Commission’s regulations concerning the timing and manner of requesting reconsideration were also ambiguous. *Id.* at 541. That lack of clarity led directly to the petitioner’s error and deprived him of his appeal rights. *Id.* at 542. We therefore granted relief. *Id.* at 543.

In *Monroe County Board of Assessment Appeals v. Miller*, 570 A.2d 1386 (Pa. Cmwlth. 1990), the landowner had been misinformed by a notice from the Board of Assessment Appeals that she had 60 days to appeal its tax assessment decision when, by law, she had only 30 days to appeal. *Id.* at 1387. This Court concluded that the landowner’s reliance on that erroneous information warranted relief, which is available “where a litigant is unintentionally misled by officials as to the proper procedure to be followed.” *Id.* at 1388.

Here, the WCJ found that Quehl, Pricer, and Osler were all credible, but that no administrative breakdown occurred. WCJ Decision at 12; R.R. at 27a. Rather, the WCJ concluded that Quehl’s failure to follow up his paper NTCP with the SROI “workaround” transaction, without a denial code, to update the claim status to temporary in WCAIS was the reason Quehl could not generate an NSTC through the system after he entered an SROI with a denial code on September 21, 2016. *Id.*; R.R. at 27a. The WCJ reasoned that this error on Quehl’s part led to the unrescinded NTCP’s conversion to full acceptance as of October 5, 2016, and mandated reinstatement of Ms. Janocha’s survivors’ benefits for herself and her son. *Id.* at 10-12; R.R. at 25a-27a. The WCJ concluded that Section 121.3 of the regulations “authorizes [the Bureau] to require electronic filing of its forms.” *Id.* at 12; R.R. at 27a. According to the WCJ:

Ms. Pricer testified that [the Bureau] expected an EDI transaction placing the claim into Temporary status to be filed with a paper NTCP prior to September 2016. And Ms. Pricer and Ms. Osler both testified that [Insurer] could not file an NSTC in September 2016 because it had failed to file an EDI transaction placing the claim into “Temporary” status. Instead, [Insurer] filed a transaction placing [the claim] into “Claim Denied” status. It was this action on [Insurer’s] part that prevented [Insurer] from filing the NSTC.

Id.; R.R. at 27a.

Clearly, in mid-September 2016, the Bureau *preferred* submission through WCAIS. According to Quehl’s credible testimony, the Bureau’s general notices and updates to users, as well as Osler’s response to Quehl’s written inquiry, stated that as of September 16, 2016, paper forms would no longer be accepted. *See* R.R. at 83a. Pricer’s and Osler’s testimony and Osler’s response to Quehl’s written inquiry reflect the Bureau’s intention at that time to bar paper filings going forward. *See* R.R. at 153a-54a, 212a, & 251a.

However, as the Board explained, the Bureau’s substantive regulations still expressly allowed insurers the option of submitting paper copies by mail at that time. *See* 34 Pa. Code §§ 111.3, 121.3(a). It was not until January 28, 2017, when the Bureau issued Section 123.901, that the regulations no longer permitted paper submissions by mail. *See* 34 Pa. Code § 123.901(b). Thus, the Bureau’s September 2016 notices, updates, and Osler’s oral and written responses to Quehl’s inquiries were not yet legally binding. Although Pricer and Osler testified credibly that the Bureau no longer accepted paper NSTC forms by mail as of mid-September 2016, that practice was not consistent with the Bureau’s then-effective substantive regulations. R.R. at 153a-54a & 212a. Likewise, Osler’s explanations to Quehl that he could no longer file an NSTC by mail were also inconsistent with those

regulations. R.R. at 218a-24a & 251a. Because the Bureau was the entity “cloaked with the apparent authority” to make such statements, Quehl’s reliance on the Bureau’s misinformation was reasonable. *See Union Electric*, 746 A.2d at 584. Consequently, he was dissuaded from filing a hard copy of the NSTC with the Bureau by mail, which the applicable regulations would still have allowed him to do in order to rescind the NTCP, regardless of its status in EDI.

The information supplied to Quehl by the Bureau, through its general notices and updates as well as Osler’s oral and written responses, constituted an administrative breakdown similar to those this Court found worthy of relief in *Union Electric*, *Seropian*, and *Monroe County*. Quehl’s initial failure to update the claim to temporary status in WCAIS was a mistake on his part in terms of using the EDI system, but contrary to the Bureau’s representations to him, it was not fatal to his ability to file a paper NSTC by mail under the law in effect at that time. Therefore, the WCJ erred in concluding that the only way Quehl could submit an NSTC as of mid-September 2016 was via WCAIS.

The Board’s reasoning in affirming the WCJ’s decision was likewise in error. The Board correctly recognized that in mid-September 2016, the Bureau had not yet “mandated that electronic format was the only acceptable filing process” for an NSTC because Section 123.901, requiring electronic submission and barring submission by mail, would not be adopted and effective until January 28, 2017. Board Decision at 12-13; R.R. at 55a-56a. The Board noted that at the relevant time, “mailing the [NSTC] and NCD to both Claimant and the Bureau would have been a sufficient means to stop the NTCP.” *Id.* at 13; R.R. at 56a. The Board also acknowledged that the Bureau’s representatives misinformed Quehl by telling him

that he could not file a paper NSTC at all because at that time the Bureau was no longer accepting mailed paper forms. *Id.*

The Board erred, however, in faulting Quehl for relying on the Bureau's notices, updates, and responses to his inquiries, all of which led him to believe he could not mail a paper NSTC to the Bureau because it would be refused and returned. Board Decision at 13; R.R. at 56a.¹⁰ The administrative breakdown that occurred here did not pertain to the system's inability to generate an NSTC after Quehl failed to update the claim to temporary status but before he denied it in his September 21, 2016, SROI transaction. Rather, the administrative breakdown occurred when the Bureau instructed Quehl that as of September 16, 2016, he could no longer rescind the NTCP by means of a paper NSTC filed by mail with the Bureau. That misinformation, first from the Bureau's general notices and updates to all users, then directly from Osler to Quehl, was inconsistent with the Bureau's own substantive regulations, which at that time still allowed paper submissions by mail. The Bureau's error was further compounded by the fact that, as credibly stated by Pricer and Osler, *the Bureau in fact would not have accepted a paper filing from Quehl*, despite being required by then-existing regulations to do so.

Quehl's decision not to mail the Bureau a copy of the hand-generated paper NSTC, which he created after his exchanges with Osler and mailed to Ms. Janocha, was *not* attributable to his earlier failure to update the claim to temporary status in WCAIS, which was a curable error when he made it because the regulations at that time did permit a paper NSTC to be mailed to the Bureau. Rather, Quehl's failure to mail the NSTC to the Bureau was due to erroneous instructions from the

¹⁰ The Board added that it agreed with the WCJ that no administrative breakdown had occurred because Quehl's user error in failing to update the claim in WCAIS to temporary status after filing the paper NTCP was the cause of his inability to generate an NSTC. Board Decision at 14; R.R. at 57a.

Bureau itself that to do so would be futile. Moreover, although Quehl is an experienced adjuster, it was reasonable for him to rely on the Bureau's multiple directives, particularly because he exercised diligence in trying to find out what happened and how it could be fixed. The Bureau's misinformation to Quehl, which conflicted with its own substantive regulations, amounted to administrative breakdown that directly prevented Insurer from rescinding the NTCP, even though Insurer had timely notified Ms. Janocha that it was rescinding the NTCP and denying the claim, and had requested help from the Bureau, both by telephone and in writing, to do so.¹¹ The resulting wrongful deprivation of Insurer's right to a merits consideration of its decision to deny this claim warrants relief.¹² *See Union Electric, Seropian, Monroe County*. The Board therefore erred as a matter of law in affirming the WCJ's determination.

Conclusion

The WCJ erred in holding that Quehl's failure to update this claim in WCAIS to temporary status was the cause of Insurer's subsequent failure to timely rescind the NTCP it had previously issued. Because the regulations in effect at the

¹¹ In this regard, this case is distinguishable from our decision in *Pennsylvania State University v. Workers' Compensation Appeal Board (Underhill)* (Pa. Cmwlth., No. 1662 C.D. 2018, filed Nov. 15, 2019) (unreported). In *Underhill*, the adjuster made an electronic entry indicating that an NTCP would be filed, and she received an acknowledgment of that entry that she incorrectly thought was a filing receipt; however, she never actually filed the NTCP either electronically or by mail. *Id.*, slip op. at 7-11. The adjuster mistakenly thought she had mailed it, but as it never reached either the Bureau or the claimant, a WCJ concluded that the adjuster's testimony that she mailed it was not credible, especially because she was moving her office at the time, had no specific recollection of mailing the NTCP, and also neglected other related filings. *Id.*, slip op. at 10-11. Thus, unlike in this case, the outcome in *Underhill* hinged not on an administrative breakdown, but on the adjuster's lack of credibility and the absence of any effort on her part to file the NTCP.

¹² According to Employer's brief, Ms. Janocha filed a fatal claim petition in January 2019. Employer's Br. at 36 n.83. On remand, litigation on any pending claim petition may proceed.

relevant time still permitted submission of a paper NSTC to the Bureau by mail, the Bureau's instructions to Quehl that doing so would be futile constituted an administrative breakdown. We therefore hold that in the unique circumstances this case presents, the WCJ's grant of Ms. Janocha's Reinstatement Petition was based on an error of law.

The Board likewise erred as a matter of law in affirming on the grounds that Quehl's reliance on the Bureau's mistaken directive that he could not mail a paper NSTC to the Bureau to rescind the NTCP was unfounded. Accordingly, we reverse and remand this matter to the Board for a remand to the WCJ for further proceedings consistent with this Opinion. Specifically, on remand, the Board shall direct the WCJ to treat both the NSTC and the NCD as properly filed with the Bureau.

CHRISTINE FIZZANO CANNON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mekis Construction Corp. and	:	
BITCO National Insurance Company,	:	
Petitioners	:	
	:	
v.	:	
	:	
James L. Janocha, deceased, c/o	:	
Shelly Janocha (Workers’	:	
Compensation Appeal Board),	:	No. 916 C.D. 2020
Respondent	:	

ORDER

AND NOW, this 30th day of August, 2021, the August 27, 2020, order of the Workers’ Compensation Appeal Board (Board) is REVERSED and this matter is REMANDED to the Board for further remand to a workers’ compensation judge (WCJ) for further proceedings consistent with this Opinion. On remand, the Board shall direct the WCJ to treat both the Notice Stopping Temporary Compensation and the Notice of Compensation Denial as properly filed with the Bureau of Workers’ Compensation.

Jurisdiction is relinquished.

CHRISTINE FIZZANO CANNON, Judge