IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Brian S. Shelton, Petitioner	:	
v.	:	No. 277 C.D. 2008
	:	Submitted: May 16, 2008
Workers' Compensation Appeal Board (Woodlawn Avenue CVS, Inc.), Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge*

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT FILED: June 26, 2008

Brian S. Shelton (Claimant) petitions for review of an adjudication of the Workers' Compensation Appeal Board (Board) reversing the decision of the Workers' Compensation Judge (WCJ) to grant Claimant's penalty petition. The Board held that Woodlawn Avenue CVS, Inc. (Employer) was not obligated to pay Claimant's outstanding medical expenses because they were not submitted on the proper forms. Concluding that Employer had agreed to pay these expenses, notwithstanding the fact that they had not been submitted on the correct form, we reverse the Board.

* The decision in this case was reached before the conclusion of Senior Judge Colins' service.

Claimant was employed as a cashier by Employer. As part of his duties, Claimant was required to unload a truck shipment once a week. On June 30, 2005, Claimant sustained a low back and testical injury while unloading a truck shipment. As a result, Claimant sought medical treatment.

Claimant filed a claim petition seeking disability benefits for his injury. A hearing was held before WCJ Beverly J. Doneker. At the hearing, Claimant submitted into evidence, without objection, the following: a copy of a judgment entered against Claimant and in favor of Cedar Crest Emergicenter in the amount of $937.50 for collection of an invoice from Cedar Crest Emergicenter in the amount of $887.50; a copy of the Cedar Crest Emergicenter invoice; and a copy of an invoice from a collection agency for services rendered by Lehigh Valley Diagnostic Imaging showing a balance of $206.00. Reproduced Record at 67a-69a. (R.R. ___). Employer made no objection to the admission of these documents that detailed Claimant's outstanding and unpaid work-related medical expenses. Further, Employer did not object that Claimant had not submitted these medical expenses on the correct form.

On August 8, 2006, the parties entered into a stipulation agreeing that Claimant suffered a compensable work-related injury on June 30, 2005, and that Claimant's benefits were terminated as of October 29, 2005. The stipulation further indicated that "[t]o the extent that Claimant has unpaid and outstanding medical expenses, they will be the responsibility of the [Employer]."[1] R.R. 51a. On August 16, 2006, the WCJ issued an order approving and incorporating the parties' stipulation. The order further provided that "[Employer] is directed to pay

[1] The parties did not enter into a compromise and release agreement.

compensation, medical expenses, litigation costs and counsel fees in accordance with the adopted Stipulation." R.R. 49a.

On December 11, 2006, Claimant filed a penalty petition asserting that Employer had failed to pay his outstanding medical expenses in accordance with the WCJ's order of August 16, 2006. Employer timely filed an answer denying the allegations.

A hearing was held before the WCJ. In support of his petition, Claimant again submitted the Cedar Crest judgment and the Lehigh Valley invoice. Employer offered no evidence in opposition to the petition and, instead, argued that it was not obligated to pay the bills because they had not been submitted on the requisite forms.[2]

On April 19, 2007, the WCJ issued a decision finding that the clear and unambiguous language of the stipulation obligated Employer to pay all related outstanding medical expenses regardless of how they were submitted. Therefore, the WCJ awarded Claimant a fifty percent penalty and unreasonable contest fees.[3] Employer appealed to the Board.

On January 25, 2008, the Board reversed the decision of the WCJ. The Board concluded that the WCJ erred in finding that Employer was in violation of the Act because Section 306(f.1) of the Act does not obligate an employer to

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[2] Employer did not contest the fact that the medical bills were for treatment of Claimant's work-related injury.

[3] Under the Workers' Compensation Act, Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §§1-1041.4, 2501-2708 (Act), a claimant who prevails in whole or in part is entitled to recover reasonable attorneys' fees from the insurer unless the insurer satisfies its burden to establish that there was a reasonable basis for contesting liability. *Bates v. Workers' Compensation Appeal Board (Titan Construction Staffing, LLC)*, 878 A.2d 160, 163 (Pa. Cmwlth. 2005). A contest is reasonable when it is prompted to resolve a genuinely disputed issue, rather than to merely harass the claimant. *Id.*

pay for medical expenses unless the invoices therefor are submitted on the correct form.[4] Claimant now petitions for review.

On appeal, Claimant raises one issue.[5] He contends that the Board erred because the stipulation governed Employer's obligation, and that stipulation did not provide that Claimant had to submit the Cedar Crest judgment and Lehigh Valley invoice on the correct form. Claimant argues, in effect, that Employer waived its right to invoke Section 306(f.1) of the Act.

When a claimant files a petition seeking an award of penalties, the claimant bears the burden of proving that a violation of the Act occurred. *Shuster v. Workers' Compensation Appeal Board (Pennsylvania Human Relations Commission),* 745 A.2d 1282, 1288 (Pa. Cmwlth. 2000). Where a violation is proven, the assessment of penalties, and their amount, is committed to the discretion of the WCJ. *City of Philadelphia v. Workers' Compensation Appeal*

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[4] Section 306(f.1) of the Act provides, in pertinent part, as follows:

> (1)(i) The employer shall provide payment in accordance with this section for reasonable surgical and medical services, services rendered by physicians or other health care providers, … medicines and supplies, as and when needed.
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> (5) The employer or insurer shall make payment and providers shall submit bills and records in accordance with the provisions of this section.

77 P.S. §§531(1)(i), (5).

[5] This Court's review of an order of the Board is limited to determining whether the necessary findings of fact were supported by substantial evidence, constitutional rights were violated, or errors of law were committed. *Borough of Heidelberg v. Workers' Compensation Appeal Board (Selva),* 894 A.2d 861, 863 n.3 (Pa. Cmwlth. 2006).

Board (Sherlock), 934 A.2d 156, 160 (Pa. Cmwlth. 2007). This Court will not overturn a WCJ's penalty decision absent an abuse of discretion.[6] *Id.* at 161.

An employer is responsible for paying medical invoices incurred in the treatment of a work-related injury, and Section 306(f.1)(5) of the Act directs that "providers shall submit bills and records in accordance with the provisions of this section." 77 P.S. §531(5). Pursuant to Section 306(f.1), the Medical Cost Containment Regulations were adopted, and they require providers to submit requests for payment of medical bills on either the HCFA Form 1500 or the UB92 Form. 34 Pa. Code §127.201.[7] In addition, the Medical Cost Containment Regulations require that providers submit medical reports on appropriate forms explaining their treatment, and insurers are not obligated to pay for treatment until they receive such reports. 34 Pa. Code §§127.202-127.203.[8] However, the rule on forms is not an inflexible one.[9]

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[6] An abuse of discretion is not merely an error of judgment but, rather, is a misapplication of the law in reaching a conclusion. *Jordan v. Workers' Compensation Appeal Board (Philadelphia Newspapers, Inc.)*, 921 A.2d 27, 41 (Pa. Cmwlth. 2007).

[7] 34 Pa. Code §127.201 states, in relevant part, as follows:

> Requests for payment of medical bills shall be made either on the HCFA Form 1500 or the UB92 Form (HCFA Form 1450), or any successor forms, required by HCFA for submission of Medicare claims. If HCFA accepts a form for submission of Medicare claims by a certain provider, that form shall be acceptable for billing under the [A]ct.

[8] 34 Pa. Code §127.202 states, in relevant part, as follows:

> Until a provider submits bills on one of the forms specified in § 127.201 (relating to medical bills -- standard forms) insurers are not required to pay for the treatment billed.

34 Pa. Code §127.203 states, in relevant part, as follows:

> (a) Providers who treat injured employees are required to submit periodic medical reports to the employer, commencing 10 days after treatment begins and at least once a month thereafter as long as treatment continues. If the employer is covered by an insurer, the provider shall submit the report to the insurer.

(Footnote continued on the next page . . .)

In *Westinghouse Electric Corporation v. Workers' Compensation Appeal Board (Weaver)*, 823 A.2d 209 (Pa. Cmwlth. 2003), the WCJ issued a decision based, as here, upon a stipulation of the parties. Under that stipulation, the claimant incurred certain medical expenses for treatment of his work-related injury, and the employer was directed to pay the listed medical invoices. The employer did not appeal the WCJ's order, but the employer also did not pay the medical expenses at issue. As a result, the claimant filed a penalty petition. The WCJ granted the claimant's penalty petition, and the Board affirmed. On appeal, the employer argued that it was not obligated to pay the medical invoices because they had not been submitted on the proper forms. This Court noted that the employer did not appeal the WCJ's previous decision that awarded the medical expenses as reasonable and necessary. Thus, even though they had not been submitted on the proper forms, the medical bills were the subject of a valid and unappealed order requiring the employer to pay them. Accordingly, this Court

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> (d) If a provider does not submit the required medical reports on the prescribed form, the insurer is not obligated to pay for the treatment covered by the report until the required report is received by the insurer.

[9] *See, e.g., Seven Stars Farm, Inc. v. Workers' Compensation Appeal Board (Griffiths),* 935 A.2d 921 (Pa. Cmwlth. 2007) (holding that a provider's failure to submit the required written report to the insurance carrier did not excuse an employer from penalties for failure to pay the bills because it previously paid the medical bills without them being submitted on the proper HCFA Form and because the claimant submitted all the information necessary for the medical bills to be paid); *see also Sims v. Workers' Compensation Appeal Board (School District of Philadelphia),* 928 A.2d 363 (Pa. Cmwlth. 2007) (holding that because the medical bill was not presented on the proper forms and claimant did not provide the employer with sufficient information to allow it to know that the medical bills were for treatment related to the work injury, the claimant did not meet her burden of proving that the medical invoice was related to the work injury).

affirmed the Board, holding that employer was obligated to pay the medical bills as ordered by the WCJ. *Id*. at 214.

On the other hand, in *AT&T v. Workers' Compensation Appeal Board (DiNapoli)*, 728 A.2d 381 (Pa. Cmwlth. 1999), this Court held that an employer did not have to pay a claimant's medical expenses until they were submitted on the correct form. At issue in *AT&T* was whether the medical expenses at issue were work-related. Finding in favor of the claimant, this Court then remanded the matter to allow the medical provider to submit his medical bills on the required forms. *Id*. at 384. As explained by this Court in *Westinghouse*, *AT&T* was different because the employer had not been previously ordered to pay the medical bills. Where the litigation establishes, for the first time, that the claimant's medical expenses were incurred for treatment of a work-related injury, then it is appropriate for this Court to direct their submission on the correct form.

Here, Claimant argues that this is a *Westinghouse*-type case, and Employer argues that the Board was correct in treating this matter as an *AT&T*-type case. We agree with Claimant.

Employer entered into a stipulation agreeing to resolve Claimant's claim petition. A copy of the Cedar Crest judgment and Lehigh Valley invoice were entered into the record, and under the stipulation, Employer agreed to be liable for Claimant's unpaid and outstanding medical expenses. On August 16, 2006, the WCJ approved the stipulation, ordering Employer to pay Claimant's unpaid and outstanding medical expenses. The WCJ's decision expressly stated that both the Cedar Crest judgment and the Lehigh Valley invoice were admitted as evidence of record. There was no reason for their admission except to identify those "unpaid and outstanding" medical expenses referenced in the stipulation.

Employer did not appeal the WCJ's August 16, 2006, decision and order awarding the medical expenses.[10] Although Employer argues that it should have the right to reprice the invoices from Cedar Crest and Lehigh Valley, the WCJ observed that the invoices were already in collection and, thus, repricing would be unfair to Claimant. As in *Westinghouse*, Employer was ordered to pay outstanding medical expenses, *i.e.*, the ones admitted into the record. If Employer believed the WCJ's order was overbroad, because it did not require Claimant to submit the medical invoices on the proper form, it could have appealed the WCJ's decision. It did not do so.

Absent the grant of a supersedeas or stay, all orders regarding workers' compensation benefits are subject to immediate payment. *City of Philadelphia v. Workers' Compensation Appeal Board (Sherlock)*, 934 A.2d 156, 161 (Pa. Cmwlth. 2007). Section 430(b) of the Act provides, in relevant part, as follows:

> Any insurer or employer who terminates, decreases or refuses to make any payment provided for in the decision without filing a petition and being granted a supersedeas shall be subject to a penalty as provided in Section 435 …

77 P.S. §971(b).[11] Here, notwithstanding the WCJ's August 16, 2006, order, Employer has failed to pay the Cedar Crest judgment and the Lehigh Valley

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[10] In fact, following a discussion off the record at the hearing on the penalty petition, the WCJ explained on the record that Employer acknowledged that the medical bills in dispute are the same ones that were addressed in the claim petition proceeding that was resolved in the WCJ's April 16, 2006, decision awarding the medical expenses. Notes of Testimony, dated February 5, 2007, at 5.

[11] Section 435(d)(i) of the Act provides as follows:

> Employers and insurers may be penalized a sum not exceeding ten percentum of the amount awarded and interest accrued and payable: Provided, however, That such penalty may be increased to fifty percentum in cases of unreasonable and

(Footnote continued on the next page . . .)

invoice. We hold that because Employer was ordered to pay the Cedar Crest judgment and Lehigh Valley invoice and did not do so, the WCJ was correct in granting Claimant's penalty petition.

Based on the foregoing, the Board's adjudication is reversed, and the decision of the WCJ awarding Claimant a fifty percent penalty and unreasonable contest fees is reinstated.

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> excessive delays. Such penalty shall be payable to the same persons to whom the compensation is payable.

77 P.S. §991(d)(i).

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ORDER

AND NOW, this 26th day of June, 2008, the order of the Workers' Compensation Appeal Board dated January 25, 2008, in the above-captioned matter is hereby REVERSED, and the decision of the Workers' Compensation Judge of April 19, 2007, is REINSTATED.

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MARY HANNAH LEAVITT, Judge