

Decision of the Appeal Division

Number: 00-2001

Date: December 14, 2000

Panel: Herb Morton

Subject: Whether Employer Raising an Appealable Issue

APPEAL DIVISION (PRACTICE AND PROCEDURE) (RELIEF OF COSTS) – Relief of costs denied but not appealed – Employer sent a form letter requesting a decision relative to all claim costs charged to the employer – Case manager enclosed the previous decision and stated that “there is no other reason to relieve costs” – Employer sought to appeal the response letter – Preliminary issue whether there was a valid appeal – Employer’s appeal denied as premature and not raising an appealable issue.

Law: WCA (1996): s. 39(1)(e)

Decisions: Decision No. 22, 13 *Workers' Compensation Reporter* 95

Section 39(1)(e) [employer appeal, s. 39(1)(e) (comp. div.)]

Appeal Division Decision No. 2000-2001

17 Workers' Compensation Reporter 317

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- (1) The employer appeals the August 26, 1999 decision by the case manager.
 - (2) Subsections 96(6) and (6.1) of the *Workers Compensation Act* provide employers with a right of appeal (from certain categories of decisions) to the Appeal Division “on the grounds of error of law or fact or contravention of a published policy of the governors.” By letter dated August 27, 1999, the employer’s representative advised that this appeal is based on the grounds of an error of fact, error of law, or a contravention of published policy.

Authorization

- (3) This appeal was filed in 1999, prior to the September 29, 2000 practice and procedure guidelines (*Appeal Division Requirements for Authorizations*) provided by the chief appeal commissioner. As those guidelines are stated to be effective for all appeals filed with the Appeal Division on or after November 1, 2000, they are not applicable to this appeal. I consider it necessary, however, to satisfy myself as to the validity of the authorization provided in connection with the appeal before me, based on general legal principles, as this relates to whether there is an appeal properly before me.
- (4) The employer provided an authorization dated February 12, 1998 to a consulting firm, P, which appears to be based in Alberta. P, in turn, provided a *Direction of Authorization* dated April 7, 1998 to a British Columbia consulting firm, M. M initiated certain inquiries to the

Board, and this appeal. Both authorizations were submitted to the Board together to show the chain of authorization tracing back to the employer. This raises a question as to the validity of M's authorization, in view of the general legal principle that an agent cannot delegate to another agent.

- (5) In reviewing this matter, I note that the authorization by the employer to the first agent, P, was to the firm *and "its agents and employees."* The subsequent authorization from P was directed to M "as acting agents of" P. In light of the express consent provided by the employer to P acting through an agent, for the purposes of this appeal I accept M's authorization as valid.

Background

- (6) The worker suffered an injury on October 29, 1997, while working as a saw filer/edger in a sawmill. The employer's report of injury states that the worker was straightening logs when one log swung up and hit him in the side of the face. There was a brief loss of consciousness. He suffered left facial fractures.
- (7) By report dated March 5, 1998, Dr. L, consultant neurosurgeon, Head Injury Program advised:

[The worker] sustained a blow to his head on October 29, 1997 with a brief period of loss of consciousness and several minutes, possibly up to 25 minutes of a P.T.A. Since then he has had symptoms suggestive of labyrinthine problems and well as cognitive problems coming on as a result of a mild brain injury. He continues to have some partial sensory loss in several branches of the second division of the left 5th cranial nerve.

. . . There is little doubt that he had a legitimate brain injury by history . . .

- (8) A report dated April 15, 1998 by Dr. K, neurologist, Head Injury Program, stated:

The best estimate . . . would be that this patient suffered a mild closed head injury at the time of the work accident of October 29, 1997. Subsequent to this mild head injury the patient described changes in mood alteration and sleep and difficulties with fatigue and cognitive function. All this would be consistent with a post closed head injury syndrome. It is important to note that all of those symptoms have been improving over the six months since the time of the original injury. . . .

The patient has had an M.R.I. scan of his head. This is an entirely normal study. It eliminates any presence of any significant structural cerebral or brain injury having occurred as a result of the injury in question. I think his overall prognosis is good. The final neurological outcome, however, may not be known for at least an additional 12 to 18 months.

- (9) By letter dated June 10, 1999, the claims medical advisor wrote to the worker's family physician, stating:

It is the Head Injury's conclusion that he would not be considered plateaued until two years from the date of injury. After that time, when he has the Permanent Functional Assessment done, there would be enough information to ascertain if he would be safe again from the neuropsychological and neurological viewpoint to drive on the highway.

- (10) As of December 3, 2000, the worker is presently in receipt of section 30 benefits for temporary partial disability. The worker is currently appealing a decision dated June 9, 1999 to the Review Board.
- (11) By letter to the employer dated February 4, 1998, the claims officer advised that when a worker has received 13 weeks of wage loss benefits, the claim is reviewed by a Board medical advisor to determine if there is any indication of a pre-existing condition, disease or disability. She advised that this had been done in this case, and it was concluded that there were no grounds for granting relief of claim costs under section 39(1)(e). The employer did not appeal the February 4, 1998 decision.
- (12) Without any reference to the decision of February 4, 1998, or the circumstances of this claim, by what appears to be a type of form letter dated August 6, 1999, the employer's representative wrote to the claims adjudicator, listing a series of requests and questions. The letter stated:

We represent the employer on the above matter. Please provide a decision on this claim relative to ***all claim costs charged to this employer***. Consider relief of costs under W.C. Act, Sections: 39(1)(d), 39(1)(e), 5(5), and 42 as well as any claims costs excluded from consideration as outlined under WCB Claims Policy #115.30. Provide a decision relative to WCB Law and Policy on any and all costs inappropriately charged to the employer, including but not limited to erroneous wage rates, non-related medical or other costs.

In your decision letter, please provide a response to the following questions:

1. What are the details of the accepted injury, specifically; cause, extent of disability, days, wage loss, medical aid, rehabilitation, pension?
2. What was the severity of the incident initiating this claim?
3. Was there any pre-existing condition, disease, or disability present? If yes, what was the extent of the pre-existing condition, disease, or disability and did it enhance the disability?
4. Has Section 39(1)(d), 39(1)(e), 5(5), or 42 been considered on this claim? If yes, has there been any new evidence on the claim file since any previous decision?

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5. What are the details of any relief of cost applied?
 6. Are there any costs charged to this claim relative to the above WCB Law and Policy, which are not a direct result of the claimed injury?

We request this information to ensure the employer on this claim has received fair consideration on any costs charged against this claim and the decision is clearly communicated to the employer.

[reproduced as written]

- (13) By reply dated August 27, 1999, the case manager advised the employer's representative as follows (quoted in full):

Your correspondence of August 6, 1999, has been brought to my attention and I am enclosing a copy of a decision letter of February 4, 1998, which supplied the employer with a decision regarding Section 39(1)(e) and information regarding the appeal process. There is no other reason to relieve costs under this claim.

- (14) The employer seeks to appeal the August 27, 1999 letter to the Appeal Division. The appeal officer wrote to the employer's representative, inquiring as to whether the employer wished to apply for an extension of time to appeal the February 4, 1998 decision to deny relief of claim costs under section 39(1)(e) of the Act.
- (15) The employer's representative does not request an extension of time to appeal concerning the denial of relief of claim costs. Rather, by letter of July 1, 2000, he advises:

I believe the statement "There is no other reason to relieve costs under this claim." is a new decision. This is the decision under appeal.

[reproduced as written]

- (16) In a further letter dated July 26, 2000, the employer's representative reiterated:

Our initial letter requested a decision on this claim relative to *all claim costs charged to this employer*. We requested a consideration on relief of costs under W.C. Act, Sections: 39(1)(d), 39(1)(e), 5(5), and 42 as well as any claims costs excluded from consideration as outlined under WCB Claims Policy #115.30.

The statement "There is no other reason to relieve costs under this claim." is a new decision in reply to our request. This is the decision under appeal.

[reproduced as written]

- (17) No other submission has been received in support of the employer's appeal.

Issue(s)

- (18) The preliminary issue is whether there is a valid appeal before the Appeal Division, in respect of the statement "There is no other reason to relieve costs under this claim."

Findings and Reasons

- (19) While the employer's representative asserts that the appeal has been brought on the grounds of an error of fact, error of law, or a contravention of published policy, no effort has been made to identify or explain the basis for this general assertion.
- (20) No argument has been presented to explain the basis for the employer's appeal, to articulate a basis for the employer's dissatisfaction with a decision. In fact, no specific concern was initially raised for consideration by the claims adjudicator, apart from the very general form letter listing a series of requests to the claims adjudicator without any attempt to relate them to the circumstances of the worker's claim.
- (21) While not necessary to my decision, I would note that this type of form letter inquiry appears to be in the nature of a "fishing expedition." To respond fully to the range of questions presented in the questionnaire quoted above would appear to require a very time consuming and perhaps wasteful use of resources. No argument or issue has been raised to suggest that the employer has a particular concern which they were asking the Board officer to address.
- (22) Certainly, the employer has a right to be informed and to participate in connection with the worker's claim. However, I am not persuaded that this means the adjudicator is required to provide detailed responses to form letter inquiries which do not relate to the circumstances of the claim. Were the employer's representative to articulate a specific concern to the claims adjudicator, no doubt they could reasonably expect to receive a reasoned response.
- (23) I do not view the statement "There is no other reason to relieve costs under this claim" as providing the basis for an appeal to the Appeal Division. In the absence of a reasoned decision, it would likely be difficult or impossible to assess whether there was an error of fact, law or policy in the decision. As well, in the absence of a particular concern being expressed on behalf of the employer, it is not evident what issue the Appeal Division is being asked to address on appeal.
- (24) Furthermore, to the extent the Board officer responds to a form letter such as the one dated August 6, 1999, it is necessary to consider whether the response is simply an information letter which is not appealable, a refusal to readjudicate on the basis that sufficient grounds had not been provided to warrant readjudication of a prior decision, or a new decision on the merits. Separate consideration would be required in relation to each possible issue. Without a reasoned decision, or submissions identifying a particular concern, it is not evident which issues are being presented in this appeal.

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- (25) The employer's representative does not appear to be pursuing the issue of relief of claim costs under section 39(1)(e) in this appeal, as no request has been made for an extension of time to appeal the February 4, 1998 decision. The Appeal Division could not address section 5(5) on an appeal directly to the Appeal Division, as decisions concerning the application of proportionate entitlement are appealable to the Review Board. With reference to section 39(1)(d), there is no suggestion of any disaster or other circumstance which would unfairly burden the employers in a class.
- (26) In terms of the various grounds available under item #115.30 of the *Rehabilitation Services and Claims Manual* for requesting relief of claim costs for experience rating purposes under section 42, the August 26, 1999 letter did not provide any reasoned decision in relation to any particular ground. I refer, in this regard, to the reasoning expressed in Appeal Division Decision No. 22 (*Practice and Procedure concerning Appeals From Historical 39(1)(e) Project Review Clerk Decisions*, 13 *Workers' Compensation Reporter* 95). Nor has any submission been provided to the Appeal Division to support a claim for relief under any of these grounds.
- (27) In the circumstances, I find that the appeal raises no appealable issue. The employer's appeal is denied as being premature and as not raising any appealable issue.
- (28) If the employer has a particular concern relating to the adjudication of the claim, their concern should be brought to the attention of the claims adjudicator. No doubt a reasoned decision would be provided in response to a particular concern or question raised relating to the circumstances or adjudication of this claim (as opposed to a form letter of inquiry). If the employer was not satisfied with the response, they could then consider whether the issue was one which was appealable to the Review Board, the Appeal Division, or a Medical Review Panel.

Conclusion

- (29) The employer's appeal is denied on a preliminary basis as being premature and as not raising an appealable issue.

Editors' Note: The names of the parties have been removed for privacy considerations. The text of the decision is otherwise unchanged.