STATE OF MINNESOTA

WORKERS' COMPENSATION COURT OF APPEALS

No. WC19-6287

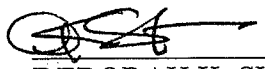
Scott Koehnen, Respondent,	Fields Law Firm Blake R. Bauer 9999 Wayzata Boulevard Minnetonka, Minnesota 55305
v.	
Flagship Marine Company and Auto Owners Insurance Company, Respondents,	Cousineau, Waldhauser & Kieselbach, P.A. Natalie K. Lund Michael R. Johnson 1210 Northland Drive Suite 130 Mendota Heights, Minnesota 55120
and	
Keith Johnson, D.C., Appellant.	Law Office of David C. Wulff David Wulff 2575 Hamline Avenue N. Suite D Roseville, Minnesota 55113

The health care provider's appeal filed April 19, 2019, from the Order on Motion for Dismissal of Compensation Judge Kirsten Tate, served and filed April 16, 2019, was heard on September 30, 2019, pursuant to due notice, before Judge Deborah K. Sundquist, Chief Judge Patricia J. Milun, Judge David A. Stofferahn, Judge Gary M. Hall, and Judge Sean M. Quinn, of the Workers' Compensation Court of Appeals.

Based on the pleadings in the case, the transcript of evidence taken before the compensation judge, the exhibits admitted into evidence, and the briefs and arguments of counsel, the court is of the opinion that the Findings and Order of the compensation judge are in accord with the evidence and law in the case.

NOW, THEREFORE, this court AFFIRMS the Order on Motion for Dismissal of Compensation Judge Kirsten Tate, served and filed April 16, 2019.

BY THE COURT:



DEBORAH K. SUNDQUIST, Judge

OPINION

DEBORAH K. SUNDQUIST, Judge

This matter is before the court on a health care provider's appeal from an order dismissing his petition seeking payment of his bill for treatment rendered to the employee for a work-related injury. Where the provider was given notice of his right to intervene, he chose not to intervene, and his rights were extinguished pursuant to statute in an award on stipulation, the compensation judge did not err in dismissing the petition. We affirm.

BACKGROUND

Keith Johnson, D.C., provided chiropractic treatment to Scott Koehnen, the employee, for a low back injury sustained while working for the employer, Flagship Marine Co. The employer and its insurer, Auto Owners Insurance, admitted liability for the employee's low back injury but disputed the nature and extent of the injury. Accordingly, Dr. Johnson's bill was not paid, leaving a balance due in excess of $9,000.00.

The employee filed a claim petition seeking various benefits, including payment of Dr. Johnson's outstanding bill. Along with the claim petition, Dr. Johnson was served with a notice outlining his right to intervene and the consequences should he not exercise that right. Dr. Johnson acknowledged receipt of this notice and chose not to intervene, instead relying on the employee's attorney's assurances that his bill would be satisfied. (Ex. A.) At no time did Dr. Johnson pursue intervention.

The employee entered into a settlement agreement with the employer and insurer. The agreement resolved the employee's claim for benefits and settled the interests of other health care providers who had intervened in the matter. Dr. Johnson had not intervened and was not extended an offer of settlement to address his outstanding bill. The settlement agreement was submitted and approved, and an Award on Stipulation was filed on April 23, 2018. The award extinguished Dr. Johnson's interest, and by operation of statute, barred Dr. Johnson from collecting from the employee or a third party.

On January 2, 2019, months after having been served with the award, Dr. Johnson filed a Petition for Payment of Medical Expenses. Both the employee and the employer and insurer filed motions to dismiss Dr. Johnson's petition. These motions came on for hearing on April 4, 2019. The compensation judge dismissed Dr. Johnson's petition with prejudice, relying on Minn. Stat. § 176.361, subd. 2(a), and Minn. R. 1420.1850 in finding that Dr. Johnson's claim was barred because he had been notified of his right to intervene in pending proceedings but did not do so within 60 days. The judge found that Dr. Johnson lacked standing to assert a claim for payment

of his outstanding bill against the employer and insurer in the absence of a pending claim asserted by the employee. Dr. Johnson appeals.

STANDARD OF REVIEW

On appeal, the Workers' Compensation Court of Appeals must determine whether "the findings of fact and order [are] clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 176.421, subd. 1(3). Substantial evidence supports the findings if, in the context of the entire record, "they are supported by evidence that a reasonable mind might accept as adequate." Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 59, 37 W.C.D. 235, 239 (Minn. 1984). Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings are to be affirmed. Id. at 60, 37 W.C.D. at 240. Similarly, findings of fact should not be disturbed, even though the reviewing court might disagree with them, "unless they are clearly erroneous in the sense that they are manifestly contrary to the weight of evidence or not reasonably supported by the evidence as a whole." Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975).

A decision which rests upon the application of a statute or rule to essentially undisputed facts generally involves a question of law which the Workers' Compensation Court of Appeals may consider de novo. Krovchuk v. Koch Oil Refinery, 48 W.C.D. 607, 608 (W.C.C.A. 1993), summarily aff'd (Minn. June 3, 1993).

DECISION

On appeal, Dr. Johnson argues that he has standing to challenge the validity and enforceability of the award on stipulation issued by the compensation judge. He argues that the April 23, 2018, Award on Stipulation is invalid and unenforceable as it extinguishes his rights on the basis that he chose not to intervene in the claim. He further argues that the provisions relied upon by the judge and adopted by the Office of Administrative Hearings exceed the express or implied authority granted by the legislature. Finally, Dr. Johnson argues that he is entitled to automatic payment of his bill under Brooks,[1] as he was completely or effectively excluded from all settlement negotiations between the employee and the employer and insurer.

As a health care provider who treated the employee for a work injury, Dr. Johnson was a "potential intervenor," defined as a person or an entity "who has an interest in a workers' compensation proceeding such that the person or entity may either gain or lose by an order or decision in the case, and the person or entity has not filed a motion to intervene under part 1415.1250 or Minnesota Statutes, section 176.361." Minn. R. 1420.0200, subp. 15. Historically, potential intervenors were not protected under the Workers' Compensation Act. In Tatro v. Hartmann's Store, 295 Minn. 282, 204 N.W.2d 125, 26 W.C.D. 576 (1973), the Minnesota Supreme Court rejected claims brought by potential intervenors who had no notice of a claim petition. The court noted the unfairness of placing potential intervenors in a position where they forfeited possible rights provided by law because, through no fault of their own, they were unaware

[1] Brooks v. A.M.F., Inc., 278 N.W.2d 310, 31 W.C.D. 521 (Minn. 1979).

of a pending proceeding. To prevent the recurrence of the result reached in the case, the Minnesota Supreme Court directed the commission to determine the most reasonable and expeditious procedure to protect the various interests of parties in workers' compensation litigation. Tatro, 295 Minn. at 286-87, 204 N.W.2d at 128, 26 W.C.D. at 580-81.

Today, both the rules and Minn. Stat. § 176.361 set forth obligations of, and offer protection for, potential intervenors and intervenors.[2] All attorneys representing parties in a workers' compensation proceeding must ask their clients about potential intervenors. Minn. R. 1415.1100, subp. 1. If the inquiry discloses the existence of a potential intervenor, the attorney must promptly serve written notice of the right to petition for intervention. Minn. R. 1415.1100, subp. 2. The attorney shall attach to the notice a copy of all pleadings in the case and must include language that failure of a potential intervenor to file a motion to intervene within 60 days of service of the notice shall result in a denial of their claim for reimbursement. Minn. R. 1415.1100, subp. 2.D. Failure to provide notice to a potential intervenor and failure to include an intervenor in settlement negotiations may result in full reimbursement of the provider's interest. See Minn. R. 1420.1850, subp. 3; see also Brooks, 278 N.W.2d at 316, 31 W.C.D. at 533.

Upon receiving notice, the potential intervenor may[3] intervene, but those who do not timely intervene are barred from recovery. The language of the statute is clear that where a motion to intervene is not timely filed, the potential intervenor's interest "shall" be extinguished and the entity "may not collect, or attempt to collect, the extinguished interest from the employee, employer, insurer, or any government program." Minn. Stat. § 176.361, subd. 2(a).

Dr. Johnson acknowledged that he was properly served with a notice to intervene and has made no objection that it was defective in any way.[4] That notice contained, in underlined and bold print, the language from Minn. Stat. § 176.361, stating that if he did not file a motion to intervene within a timely manner, his claim would be extinguished. (Ex. A). He also acknowledged that, by his choice, he did not intervene. Dr. Johnson was not involved in settlement negotiations between the employee and the employer and insurer because he had not intervened and was not a party. In an award dated April 23, 2018, the compensation judge extinguished any potential interests of Johnson Chiropractic pursuant to Minn. Stat. § 176.361. Over eight months

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[2] Minn. Stat. § 176.361, subd. 1, grants the commissioner authority to adopt rules to govern intervention. Minn. Stat. § 176.361, subd. 8, grants the chief administrative law judge authority to issue standing orders instead of, or in addition to, the authority granted under section 176.361, so long as the orders are consistent with the section.

[3] Dr. Johnson argues that in using the word "may," Minn. Stat. § 176.361, subd. 1, gives a potential intervenor a choice whether to intervene. He argues that in choosing to not intervene, he cannot be bound by the extinguishment language. We disagree. Such language is used elsewhere in chapter 176 with similar effect. See Minn. Stat. § 176.291 (an injured employee "may" file a claim petition, but if he does not do so within the applicable statute of limitations, the claim will be barred); see also Minn. Stat. § 176.421 (a party aggrieved by an order affecting the merits of the case "may" appeal to this court, though failure to timely file a notice of appeal is jurisdictional).

[4] See Malenius v. Hibbing Taconite Co., slip op. (W.C.C.A. Sept. 11, 2008).

later, Dr. Johnson as a non-party filed a petition seeking payment of his bill. The compensation judge was bound by statute to extinguish Dr. Johnson's claim because he did not file a timely motion to intervene.

Dr. Johnson also challenges the compensation judge's ruling that he lacked standing to petition for payment of his bill under chapter 176. Dr. Johnson filed a petition for payment of his bill, citing Minn. Stat. §§ 176.271 and .291, and asserting a direct claim for payment of his bill while no claim of the employee was pending. On appeal, Dr. Johnson argues that he has standing to bring a direct claim for payment of his bill and that he has standing to bring a collateral attack on the award on stipulation. We disagree. The same argument was raised and rejected in Tatro. The potential intervenors had petitioned for payment pursuant to Minn. Stat. § 176.271 which described filing a written petition as the manner in which to initiate a proceeding. The Minnesota Supreme Court determined that the potential intervenors had no standing to petition under that statute, and their claims were dismissed. Tatro, 295 Minn. at 287, 204 N.W.2d at 128, 26 W.C.D. at 581.

Citing Adams v. DSR Sales, Inc., 64 W.C.D. 396 (W.C.C.A. 2004), Erven v. Magnetation, LLC, 76 W.C.D. 433 (W.C.C.A. 2016), and Malenius v. Hibbing Taconite Co., slip op. (W.C.C.A. Sept. 11, 2008), Dr. Johnson argues that he may assert a direct claim for payment. These cases do not support Dr. Johnson's position. Instead, Adams and Erven provide that an employee, not a medical provider, may assert a claim directly for payment of medical expenses. Consistent with the permissive language of Minn. Stat. § 176.361, these cases acknowledge that a medical provider may intervene, but may also rely upon the employee to assert the claim on behalf of the medical provider. In this case, the employee made a direct claim for payment of Dr. Johnson's bill, however, he did not negotiate a settlement that included payment of Dr. Johnson's bill. Under chapter 176, the employee was not required to settle Dr. Johnson's claim as part of his agreement with the employer and insurer. In Malenius, we noted in a footnote the possibility of collusion in such a situation. Contrary to Dr. Johnson's suggestion, nothing in Malenius changes the extinguishing effect of Minn. Stat. § 176.361. A potential intervenor concerned about the possibility of collusion can reduce its risk by filing a timely motion to intervene so as to protect its interests. Dr. Johnson did not do so.

Dr. Johnson further argues that he has authority to bring his claim under Minn. Stat. § 176.291, which states, in part, that "[w]here there is a dispute as to a question of law or fact in connection with a claim for compensation, a party may serve on all other parties and file a petition with the commissioner stating the matter in dispute." Minn. Stat. § 176.291 provides that only a party may file under this section. Since Dr. Johnson is not a party to the action, he has no authority to bring a claim under Minn. Stat. § 176.291.

Dr. Johnson also asserts that he has standing to challenge the validity and enforceability of the compensation judge's award because his petition was filed as a collateral attack. In support of his position, Dr. Johnson cites to cases in which a party has challenged the validity of a judgment, either directly or collaterally. See Broen Mem'l Home v. Minn. Dep't of Human Svcs., 364 N.W.2d 436 (Minn. Ct. App. 1985); Bode v. Minn. Dep't of Nat. Res., 612 N.W.2d 862 (Minn. 2000); Hirsch v. Bartley-Lindsay Co., 537 N.W.2d 480 (Minn. 1995). The authorities cited to by Dr. Johnson fail to demonstrate how he, as a non-party potential

intervenor in a workers' compensation matter, has standing to bring a collateral attack on the compensation judge's award under which his rights were extinguished pursuant to application of Minn. Stat. § 176.361.

It is worth noting that chapter 176 does provide a remedy for a party seeking to vacate an award on stipulation. See Minn. Stat. § 176.461. The language of the statute, however, applies only to parties, and because Dr. Johnson chose not to be a party, he did not avail himself of this remedy. See Deutz v. Riley Bros. Constr., 63 W.C.D. 15 (W.C.C.A. 2002).

Finally, in his brief, Dr. Johnson states that to deny him the ability to challenge the award to which he is bound is "in direct contravention of fundamental principles of due process, equal protection of the law, and statutory and jurisdictional limits on administrative law judges." (App. Brief at 6.) To the extent Dr. Johnson is raising a constitutional argument, this court lacks jurisdiction to address such issues and is limited to providing only those remedies granted by chapter 176. See Quam v. State, Minn. Zoological Garden, 391 N.W.2d 803, 39 W.C.D. 32 (Minn. 1986).

We conclude that Dr. Johnson's interests were properly extinguished by the compensation judge under Minn. Stat. § 176.361, subd. 2(a), and that Dr. Johnson lacks standing to bring his claim, whether by statute or as a collateral attack on the award. Because he lacks standing, we need not consider the remainder of his arguments and affirm the compensation judge's dismissal of his petition.