2006

Dale T. Smith and Sons and Workers Compensation Fund v. Labor Commission of Utah and Jeffrey D. Smith : Reply Brief

Utah Court of Appeals

BEFORE THE UTAH COURT OF APPEALS

DALE T. SMITH & SONS, and WORKERS COMPENSATION FUND, Petitioners, v LABOR COMMISSION of UTAH and JEFFREY D. SMITH, Respondents.	*	Appellate No. 20061169

REPLY BRIEF OF PETITIONERS

Petition for Review from the Order of the Appeals Board of the Labor Commission of Utah

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I.

BASED UPON THE DEFINITION OF "DISABILITY" IN SECTION 34A-2-102(6), THE TERM, "COMPENSATION" IN SECTION 34A-3-110 DOES INCLUDE MEDICAL EXPENSES

Claimant argues that because Section 34A-3-110 of the Utah Code requires a comparison between non-employment disability or death and employment disability or death, there could be no such comparison when there is no "disability", only medical care, at issue and, therefore, "compensation" under Section 34A-3-110 does not include payment of medical expenses. While WCF agrees that had the legislature specifically included the phrase "medical care and treatment" along with "disability or death", this appeal would have been avoided, the definition of "disability" under Section 34A-2-102(6) of the Utah Code, includes the term "compensation", which, as fully argued in WCF's opening brief, also includes medical expenses.

The Workers Compensation Act defines[1] "disability" as "an administrative determination that may result in an entitlement to compensation as a consequence of becoming medically impaired as to function. Disability can be total or partial, temporary or permanent, industrial or nonindustrial." Utah Code Ann. § 34A-2-102(6) (2005) (emphasis added). As WCF already explained in its opening brief, the definition of "compensation", just three subsections before, includes "payments and benefits provided for in . . . [the] Occupational Disease Act." *Id.*, Subsection(3). Thus, at least for purposes of Section 34A-3-110, "disability" does include conditions that result only in the need for medical care and treatment for which payment of

[1] As explained in WCF's opening brief, definitions under the Workers Compensation Act are also applicable to the Utah Occupational Disease Act. Utah Code Ann. § 34A-3-102(2) (2005).

medical expenses would be required. Indeed, the term "disability" is used elsewhere is the Utah Occupational Disease Act. That provision states that "[t]he disabled employee is entitled to medical . . . expenses equivalent to those provided in Chapter 2." *Id.*, § 34A-3-107 (emphasis added). Apparently, under the Utah Occupational Disease Act, "disability" equates with "injury" or "medical condition". Otherwise, there would be inconsistency between two sections of the same chapter. A statute should be interpreted "in harmony with other statutes in the same chapter and related chapters." *Miller v. Weaver*, 2003 UT 12, ¶ 17, 66 P.3d 592, 597;

II.

THERE IS NO LEGITIMATE REASON TO DEPART FROM THE GENERAL DEFINITION OF "COMPENSATION" UNDER SECTION 34A-3-110

Claimant next argues that, despite the fact that "compensation" under Section 34A-2-102 does appear to include medical expenses, at other places in the Utah Labor Code[2], "compensation" probably does not include medical expenses. Claimant cites to eight provisions that he contends distinguish medical benefits from compensation benefits. In general, WCF agrees that within the specific context of the eight provisions cited, a narrower definition of "compensation" that does not include medical expenses is appropriate; however, Claimant has failed to adequately demonstrate why the context of "compensation" in Section 34A-3-110 requires a more narrow definition of that term here.[3] Indeed, until *Edmonds v. Epixtech*, Order on Motion for Review, Case No. 02-0969 (Appeals Board, August 29, 2006), the Labor Commission itself applied the more general definition of "compensation" to apportionment under

[2] The Utah Labor Code encompasses all of Title 34A, which includes both the Workers Compensation Act and the Utah Occupational Disease Act

[3] WCF recognizes that in Point I of his brief, Claimant is arguing that the context of Section 34A-3-110, does require a more narrow definition of "compensation" here, however, as argued in Point I of this brief, that contention is not "adequate "

Section 34A-3-110. *Milligan v. Utah State Tax Commission*, Order on Motion for Review, Case No. 00-0232 (Labor Commissioner, April 3, 2002).

Moreover, as WCF contends in its opening brief, there are also provisions of the Utah Labor Code that do require the more general definition of "compensation" under Section 34A-2-102(2).[4] Indeed, the Utah Supreme Court, in *Taylor v. Industrial Commission*, 743 P.2d 1183, 1185-86 (Utah 1987), held that under Section 35-1-62,[5] "compensation does include medical expenses.

III.

THE CIRCUMSTANCES OF THE *KENNECOTT* CASE ARE DISTINGUISHABLE FROM THE INSTANT CASE

Petitioner finally argues that the Appeals Board properly relied upon *Kennecott Copper Corp .v. Industrial Commission*, 597 P.2d 875 (Utah 1975) for its determination that medical expenses are not "compensation" subject to apportionment under Section 34A-3-110 of the Utah Code. WCF explained in its opening brief why *Kennecott*[6] is distinguishable here. That case involved interpretation of the statutes of limitations. If the more general definition of the term "compensation" had been used in that context, it would have rendered the separate statute of

[4] See Brief of Petitioners, at 5, 7. The specific provisions are: Utah Code Ann. §§ 34A-3-107 (2005); 35-1-62 (1984). Although WCF has not made an exhaustive search of the Labor Code, Section 34A-3-111 provides that "[t]he compensation provided under this chapter is not in addition to compensation that may be payable under Chapter 2, and in all cases when injury results by reason of an accident arising out of and in the course of employment and compensation is payable for the injury under Chapter 2, compensation under this chapter may not be payable". *Id.*, § 34A-3-111. Surely, the legislature did not intend that an injured worker could not recover indemnity benefits for the same injury (medical condition) under both the Workers Compensation Act and the Occupational Disease Act, yet could recover medical expenses under both acts?

[5] Now codified as *Id.*, § 34A-2-106.

[6] And, because it, likewise, involves a statute of limitations issue, *Christensen v. Industrial Commission*, 642 P.2d 755 (Utah 1982).

limitations for medical expenses, as opposed to indemnity benefits, meaningless. Moreover, as already discussed, *supra*, the *Taylor* case illustrates the narrowness of the *Kennecott* holding.[7]

CONCLUSION

Based upon the above discussion, this court should vacate the Decision of the Labor Commission and remand the case for further proceedings before the Appeals Board and ALJ.

RESPECTFULLY SUBMITTED, this 16th day of April, 2007.

Floyd W. Holm, Attorney for Petitioners

[7]Claimant argues that the interpretation of "compensation" under *Kennecott* has been allowed to stand; however, the apparently contrary interpretation of "compensation" under *Taylor* has also been allowed to stand. "Compensation" means different things in different contexts.

MAILING CERTIFICATE

I hereby certify that on the 16th day of April, 2007, two true and correct copies of the attached **Reply Brief of Petitioners** in the above-entitled matter, were mailed, postage pre-paid to the following:

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