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CASE LAW UPDATE

Employer Awarded Full Credit for Short Term Disability Benefits Voluntarily Paid

Randy Strickland was working for Martin Marietta as a lead person when he injured his right shoulder repairing an engine compartment door, but his claim for workers' compensation benefits was denied on the basis that his injury did not result from an accident.

Strickland's subsequent arthroscopic rotator cuff repair was paid for by health insurance. Thereafter, residual physical restrictions kept him from returning to work. After surgery, and while Martin Marietta was contesting the compensability of his claim, Strickland received \$11,532 in short term disability benefits over the course of 26 weeks pursuant to an employer-funded plan.

Strickland contested the denial of his claim, which was eventually brought to hearing before Deputy Commissioner Adrian Phillips. She agreed with Martin Marietta that Strickland had not suffered an injury by accident and found that his claim was non-compensable. However, the Full Commission reversed and entered an award of ongoing weekly benefits. It also held that Martin Marietta had not timely denied Strickland's claim and, as a result, was not entitled to a credit under N.C.G.S. § 97-42 for the \$11,532 in short term disability benefits it paid while his workers' compensation claim was being litigated.

Martin Marietta filed a Motion for Reconsideration and demonstrated to the satisfaction of the Commission that its denial of Strickland's claim had been timely, which caused the Commission to reverse itself and conclude that Martin Marietta was entitled to a credit. But, it reduced that credit by 25 percent, so as to help fund the attorney fee it awarded to Strickland's counsel. In doing so, it cited a 1991 decision of the Court

of Appeals, *Church v. Baxter Travenol Laboratories*, in which it was held that it is within the Commission's discretion to reduce an employer's credit for short term disability benefits in order to ensure that the attorney for the injured worker is adequately compensated.

Martin Marietta, which was represented by George Pender of TCDG, appealed the Commission's reduction of its credit under N.C.G.S. § 97-42. On November 18, in *Strickland v. Martin Marietta Materials*, the Court of Appeals reversed, holding that Martin Marietta was entitled to a full credit for all of the short term disability benefits it had paid to Strickland. After observing that the Commission's decision whether or not to grant a credit will not be disturbed on appeal without proof of an abuse of discretion, the Court noted that in *Evans v. AT&T Technologies, Inc. and Foster v. Western-Electric Co.*, our Supreme Court "has clarified the extent of the Commission's discretion by holding that it is an abuse of discretion for the Commission to deny an employer full credit for benefits paid under an employer-funded plan if the benefits were not due and payable when made."

When it held that the employer in *Foster v. Western-Electric* was entitled to a full credit, the Supreme Court acknowledged the importance of granting credits to employers so as to further the legislative purpose of N.C.G.S. § 97-42, i.e., encouraging employers to make voluntary payments pursuant to plans which afford "a much-needed continuity of income to injured employees" while they are disabled. In a similar way, the Supreme Court held in *Evans v. AT&T* that "employers are entitled to receive a full dollar-for-dollar credit for all benefits paid under a private plan, so long as [they] ... were not due and payable when made."

In the course of holding that the Commission erred in *Strickland* when it reduced Martin Marietta's credit so as to help fund the fee awarded to claimant's attorney, the Court of Appeals found that, as in *Foster* and

Evans, the voluntary payments Martin Marietta made to Randy Strickland “furthered the overall intent of the statute to provide compensation to individuals with work-related injuries as soon as possible.” It also recognized that reducing the employer’s credit in such a situation would have a penalizing effect, which “would inevitably cause employers to be less generous and the result would be that the employee would lose his full salary at the very moment he needs it most.”

In resolving *Strickland* as it did, the Court of Appeals did not merely distinguish *Church*, the decision upon which the Commission had based its award. Rather, it questioned whether *Church* is still good law after the Supreme Court’s decisions in *Foster* and *Evans*. In *Church*, the Court of Appeals upheld the Commission’s decision to reduce the employer’s credit under N.C.G.S. § 97-42 so as to “adequately compensate” the injured worker’s attorney because otherwise “almost no attorney could afford to take a contested case where voluntary payments had already been made.” But, in *Strickland*, the same Court found that “if *Church* remains binding, it applies only in the limited circumstance when the difference between the amount already paid by the employer and the amount awarded to the employee is so small that the claimant would be unable to obtain competent counsel if attorney’s fees were only awarded from that amount.” Because the injured worker’s attorney in *Strickland* was awarded not only 25 percent of the compensation that accrued after his short term disability benefits ended, but every fourth compensation check from an ongoing award of TTD thereafter, the Court felt that “plaintiff’s counsel will be adequately compensated” without having to deprive Martin Marietta of the full credit to which it was entitled under N.C.G.S. § 97-42.

Risk Handling Hint: Our appellate courts have made it abundantly clear that payments made by employers pursuant to employer-funded disability plans serve a laudable purpose, and granting them a full credit furthers the legislative intent behind N.C.G.S. § 97-42. To the extent that *Church* has not been explicitly overruled, its future applicability will likely be significantly limited by the holding in *Strickland*.

Presumably, the issue of whether an injured worker’s attorney has been adequately compensated is a question of fact for the Commission to resolve. When faced with that particular issue, risk managers should insist that claimant’s attorney be required to submit a verified statement setting forth the amount of time he has invested in the case. In those cases in which claimant’s attorney either has received or will be receiving every fourth check, the past and prospective amounts he will receive are clearly relevant to the question of whether he has been adequately compensated for the services he rendered to the injured worker.

Denial of Interest on Medical Expense Reimbursement to Health Carrier Upheld

Donnie Sprinkle was involved in a motor vehicle accident that gave rise to a workers’ compensation claim which his employer, Lilly Industries, contested through an unfavorable decision from the Court of Appeals in 2003. While Sprinkle’s claim remained in a denied status, his medical expenses were paid by third parties, starting with his employer-provided group insurer, followed by his wife’s health insurance plan.

After Sprinkle’s claim was found compensable, Lilly’s insurer, Liberty Mutual, reimbursed him for his out-of-pocket medical expenses, repaid Sprinkle’s third-party health insurer for the payments it made on his behalf, and paid interest on those portions of the disability award that went unpaid during the pendency of its appeal. Claimant’s attorney filed a hearing request anyhow, contending that, by virtue of the provisions of N.C.G.S. § 97-86.2, the defendants owed claimant almost \$200,000 in interest on the medical compensation that been initially paid by the two health insurers.

After a hearing on the merits of that claim, the deputy commissioner assigned to the case awarded interest on claimant’s out-of-pocket medical expenses and the Full commission affirmed, but they both found that he was not entitled to interest on the medical bills paid on his behalf by the two health insurers.

Claimant gave notice of appeal, but on November 18, in *Sprinkle v. Lilly Industries, Inc.*, the Court of Appeals affirmed the Commission’s decision to limit his interest award. In doing so, it rejected claimant’s argument that the plain language of N.C.G.S. § 97-86.2 and its previous decision in *Childress v. Trion, Inc.* mandated payment of all of the interest being claimed.

Claimant argued that N.C.G.S. § 97-86.2 calls for payment of “interest on the final award...,” including all medical compensation awarded, even those amounts reimbursed to a third-party health insurer, and *Childress* stands for the proposition that “an award of medical compensation for the plaintiff’s benefit is covered by G.S. 97-86.2.” But, the Court felt that such a literal interpretation of the statute “would contravene the legislative purpose and intent behind its enactment,” which is to (a) compensate the injured worker for having lost use of the compensation whose payment was delayed, (b) prevent the defendants from being unjustly enriched by the delay, and (3) promote settlement.

With regard to the statute’s first purpose, the Court noted that “because plaintiff had a health insurance policy, which contractually shifted the risk of loss from plaintiff to the health insurer, ... [he] did not experience a loss of use of his money

nor was he disadvantaged by an inability to pay for care.” In the absence of a compensatory purpose, the only remaining reason to award interest would be “to penalize the employer and the carrier for benefitting from the use value of the money and for electing not to settle the claim,” but “to construe N.C.G.S. § 97-86.2 as a penalty is at odds with the general purpose of the Workers’ Compensation Act,” which is to ensure a limited and determinate liability for employers. Therefore, to construe the statute so as to penalize employers and carriers would create an incentive for them to pay an award before its appeal has been decided, which would “provide a remedy to the third-party health insurer rather than the injured worker.” Moreover, “rather than limiting employers’ liability, it would increase their liability by an indefinite amount ...” Further, “the award of interest to an employee on ... medical costs for which he was indemnified by a third-party health insurer ... creates a windfall for the employee,” which is the kind of result that has been repeatedly disfavored by our appellate courts.

While in *Childress* the Court of Appeals “recognized a compensatory element to the award of interest on outstanding medical expenses,” it is clear that “interest awards on amounts reimbursed to a third-party health insurer are not for plaintiff’s benefit.” That being so, the Court concluded in *Sprinkle* that “the legislative purpose and intent in enacting N.C.G. S. § 97-86.2 was not to create a penalty to employers and carriers nor a windfall for the employee; therefore, the language ‘final award or unpaid portion thereof,’ ... must not include amounts of medical compensation for which plaintiff was indemnified by his health insurer and which were reimbursable to the third-party health insurer.”

Risk Handling Hint: The decision in *Sprinkle* serves as a useful reminder to risk managers that, when calculating their potential exposure on appeal, they should include not only interest on the indemnity compensation awarded to claimant, but the cost of interest on any potential award of medical compensation. In those cases in which there is no third party health insurer to pay the injured worker’s medical bills, the interest on those bills alone could be substantial. As such, the risk of being taxed with it might serve as a deterrent to giving notice of appeal in those cases in which the likelihood of prevailing is slim at best.

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