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Gallagher Sharp Shop Talk: Workers' Compensation

Question: Can an Ohio employer appeal the Industrial Commission's decision not to terminate a fraudulent claim?

Taking a break from our review of medical terms, I wanted to discuss a recent case decided by the Supreme Court of Ohio, concerning fraudulent claims and the right to appeal. As many of you know, Ohio R.C. 4123.512 provides for a statutory appeal to common pleas court, but only for issues involving a "right to participate." (Decisions concerning the right to compensation involve the "extent of disability.") Can an employer appeal the Industrial Commission's refusal to reverse itself and terminate a "right to participate"?

Benton v. Hamilton City Educational Serv. Ctr., 123 Ohio St.3d 347, 2009-Ohio-4969, concerned an employee who was injured in an automobile accident. A workers' compensation claim was allowed, and the employer did not appeal. Almost one year later, the employer filed a motion asking the Industrial Commission to assert "continuing jurisdiction" under R.C. 4123.52 and terminate the claim on the basis of fraud. (The motion alleged that the claimant had misrepresented the nature of her trip, and was not in the "scope of employment.") The motion was denied administratively, prompting the employer to file a notice of appeal in the Hamilton County Court of Common Pleas. The claimant filed a motion to dismiss, arguing that the denial of a motion to terminate does not go to the "right to participate" under R.C. 4123.512. The trial court granted the motion, but the First District Court of Appeals reversed, holding that the common pleas court was vested with jurisdiction because the Industrial Commission's refusal to terminate directly implicated the "right to participate." A conflict with the Second and Eleventh Districts was then certified to the Supreme Court of Ohio.

On appeal, the Supreme Court reversed, concluding that a refusal to terminate a claim does not implicate the "right to participate." The Court acknowledged that the Industrial Commission retains "continuing jurisdiction" over its orders (R.C. 4123.52), and that it may terminate a previously allowed claim based upon newly discovered fraud, mistake, or changed circumstances. It also acknowledged that, if the claim were terminated, a claimant would be entitled to a court appeal. However, the Court found that a decision not to terminate a claim is not appealable. It does not fall within the limited jurisdiction granted by R.C. 4123.512 because the status of the claim has not changed: it remains allowed. It would also be unfair to require claimants, who are designated "plaintiffs" in Court appeals, to yet again prove their claim. The Court also cited the fact that "no evidence of fraud" was found administratively, and cited the fact that the employer could have appealed the original allowance.

This decision reinforces a double standard applied to employers in workers' compensation cases, and underscores two important practice points: First, if there is any indication of fraud, employers should consider appealing the original allowance. Second, employers should thoroughly investigate any potential fraud before the initial hearings, particularly when factual discrepancies exist.

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