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Sent: Wed Apr 14 16:14:30 2010
Gallagher Sharp Shop Talk: Workers' Compensation

Question: Can a self-insured employer who mistakenly certifies a claim "fix" the mistake by simply denying the claim?

I was recently presented with this issue by a self-insured client, who utilized a third-party administrator ("TPA") to manage Ohio claims. The employer discovered that a very dubious claim had been mistakenly certified by the TPA, and in an attempt to "fix" the problem, the employer simply submitted a second First Report of Injury ("FROI") contesting the allowance. The claimant objected, and the matter was referred to hearing based upon the employer's contention that, because self-insured employers are also "administrators," it was within employer's rights to correct an error. A District Hearing Officer ("DHO") ruled that she did not have jurisdiction to reverse the initial FROI certifying the claim, and an appeal was filed by the employer.

On rehearing, a Staff Hearing Officer ("SHO") for the Industrial Commission affirmed that he did not have jurisdiction to modify the initial "mistaken" certification. Citing OAC 4123-19-03(K)(10), which states that self-insured employers have 30 days to recognize or deny conditions or claims, the SHO equated this determination to state-fund employers' initial certification. The SHO then cited *State ex rel. Baker Material Handling Corp. v. Industrial Commission* (1994), 69 Ohio St.3d 202, in finding that the initial determination by the third-party administrator could not be unilaterally modified over the objection of the claimant. (*Baker* held an employer who certified a medical condition on a form designed to report compensation had "bought" the claim.) In order to modify this finding, it was incumbent upon the employer to file a new motion seeking to invoke "continuing jurisdiction" pursuant to R.C. 4123.52. Of course, it will also be necessary to demonstrate a valid basis ("new and changed" circumstances, clear mistake of law or fact, fraud, or error by an inferior tribunal) and produce sufficient evidence to support the reversal.

Was the SHO's decision correct? While factual discrepancies exist, and the Supreme Court has tended to limit *Baker* to its facts, this situation seems on point. When third–party administrators are charged with certifying or denying claims, and an error is made, the error is not "fixable" by simply issuing a revised order. The proper method of reversing such errors is a motion for "continuing jurisdiction" pursuant to R.C. 4123.52.

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