

From: Don Drinko
Sent: Thu 3/8/2012 4:52 PM
Gallagher Sharp Shop Talk: Workers' Compensation

Question: What defects in drafting a Notice of Appeal or Complaint are fatal to an administrative appeal?

Workers' compensation appeals to the court of common pleas are entirely creatures of statute. R.C. § 4123.512 sets forth the procedure for filing these appeals, including the substance and filing requirements for a Notice of Appeal and Complaint. R.C. § 4123.512(B). If these procedures are not followed, the appeal is not properly perfected, and the court arguably does not have jurisdiction to hear it. But what errors constitute "fatal" errors? Today, the Supreme Court of Ohio addressed this question in its opinion in *Spencer v. Freight Handlers, Inc.*, Slip Op. No. 2012-Ohio-880.

Spencer involved an employee who filed a workers' compensation claim alleging he injured his shoulder while lifting at work. The claim was contested by the employer, and denied administratively. At that point, claimant filed a Notice of Appeal in the Darke County Court of Common Pleas pursuant to R.C. § 4123.512, but the Notice of Appeal named only his employer as a defendant, and did not include the Administrator for the Bureau of Workers' Compensation ("Administrator"). The Notice was also filed in the wrong county, and was not served on the BWC as required by R.C. § 4123.512(B). Similarly, the Complaint did not name and was not served upon the Administrator. The employer responded with a Motion to Dismiss, arguing that the failure to name the Administrator was fatal, and divested the trial court of subject matter jurisdiction, or in the alternative to transfer the case to Miami County. The case was transferred, and despite a Motion for Leave to Amend the Complaint filed by the claimant to include the Administrator, the Miami County court dismissed the complaint with prejudice, finding that failing to name or serve the Administrator in the Notice of Appeal or Complaint was fatal. The claimant appealed, and the Second District Court of Appeals reversed, finding that failing to name or serve the Administrator did not divest the trial court of subject matter jurisdiction. The BWC and employer moved to certify a conflict, and an appeal followed.

The Supreme Court affirmed, holding that while the specific contents of a Notice of Appeal described in the first paragraph of R.C. § 4123.512(B) are clearly jurisdictional, the requirement that the Administrator shall be a party in the second paragraph is not. The Court discussed "jurisdictional" provisions at length, and determined that the legislature could have made the second set of requirements jurisdictional if it had wished. Compliance with the first paragraph (which prescribes that the Notice shall contain the proper names, claim number, and the date of the order appealed from) is all that is required to "perfect" the appeal, and any other flaws can be resolved through amendment. Citing *Fisher v. Mayfield*, the Court also noted that only "substantial compliance" is required, and that the language at R.C. § 4123.512(B) is at least somewhat vague on the jurisdiction requirements. It concluded that the statute is vague on the subject, that the BWC had made some good arguments regarding prejudice, and urged the legislature to revisit this issue.

To be perfectly frank, this opinion makes little sense. The provisions of R.C. § 4123.512(B) are fairly clear, and the only basis for the Court's opinion appears to be that the section is broken into separate paragraphs. Going forward, and absent a motion for reconsideration, it can best be said that this decision will likely be limited to its facts. If you have any questions, or would like to discuss this or any other workers' compensation issues, you can contact me or Adam Sadowski from our Toledo office.

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