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Gallagher Sharp Shop Talk: Workers' Compensation

This week, we will discuss the Supreme Court of Ohio's September 28, 2017 decision in *Ferguson v State of Ohio*, Slip Opinion No. 2017-Ohio-7844, which found the employer "consent" provisions of R.C. 4123.512(D) to be constitutional, and thus overturned a previous ruling by the 8th District Court of Appeals. Specifically, the case dealt with a 2006 amendment to the statute, which requires that in cases where an employer appeals an IC order, a claimant must secure the permission of the employer before he can voluntarily dismiss an appeal pursuant to Ohio Civ.R. 41(A). This decision is a critical victory for employers in Ohio.

The right to appeal a workers' compensation decision to Common Pleas Court is a creature of statute. R.C. 4123.512 which created an administrative appeal from IC decisions, and required that even in appeals initiated by an employer, the claimant is the "plaintiff" who must file a "petition" (complaint) initiating the court case. In all civil lawsuits, Ohio Civ.R. 41(A) allows a "plaintiff" to dismiss their case once, without prejudice, with the right to re-file within one (1) year from the date of dismissal. Prior to 2006, the application of this rule created a burden on employers, as employees would dismiss employer-initiated appeals and spend a year collecting benefits before re-filing and starting the process all over again. In many cases, employers would have to wait up to three (3) years before they were permitted to have their appeals heard. This was particularly burdensome to self-insured employers because Ohio law lacks a method to recoup amounts paid to a claimant if the allowance is subsequently overturned at trial. In 2006, as part of broader reforms, R.C. 4123.512 was changed so that a claimant seeking to dismiss a case involving an employer appeal "without prejudice" required the claimant to secure the employer's permission first. In *Ferguson*, a claimant who had brought two (2) separate workers' compensation claims against Ford Motor Company, which were consolidated into a single case, sought to dismiss the case "without prejudice," but Ford refused to consent. After failing to secure an order from the trial court granting the dismissal, the claimant filed a declaratory-judgment action challenging the constitutionality of the consent provision of R.C. 4123.512(D). Inexplicably, the trial court found that the consent provision was unconstitutional on grounds of denial of "due process," "equal protection," and that it violated the doctrine of "separation of powers." On appeal the Eighth District affirmed the trial court's judgment in all respects, prompting a discretionary appeal to the Supreme Court.

The Court reversed, finding that the consent provisions of R.C. 4123.512(D) are fully constitutional, and that a claimant may not dismiss an employer appeal without permission. The Court noted that in its previous decisions, it found that the "savings" statute manifested in Civ. R. 41(A) did apply to workers' compensation appeals, but acknowledged that this often led to hardship for employers who were forced to wait for the claimant to re-file their case. The 2006 amendments to the statute sought to address those hardships, and the Court dismissed the "separation of powers" argument, finding that workers' compensation appeals provided for by the General Assembly are "special statutory proceedings," and the statute limiting a claimant's ability to dismiss an employer's appeal furthers a basic statutory purpose. The Court also dismissed the "equal protection" argument, finding that the application of the old statute did

cause unequal protection under the law. The Court applying a “rational basis” test, found a legitimate state interest in addressing the unfair application of the former statute on employers. Finally, the Court rejected the “due process” argument, finding that under the old rule a claimant could avoid trial for more than a year while collecting benefits, and it was in fact employers who were deprived of “due process” under the previous statute.

The decision in *Ferguson* was a unanimous as to the judgment, lending weight to the Court’s opinion that limiting the right of claimants to delay employer appeals was clearly warranted. Every Ohio employer who has ever prosecuted an administrative appeal, only to have the claimant “41(A)” a case on the eve of trial and continue collecting benefits for years while a dismissal is pending, is aware of the unfairness of the previous statute.

If you would like to submit a question to Shop Talk, or would like to discuss this or any other workers’ compensation issues, please feel free to contact me.

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