

Josef Knoff v. Josef Knoff Illuminating

(June 2, 2011)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Josef Knoff

Opinion No. 13-11WC

v.

By: Jane Woodruff, Esq.
Hearing Officer

Josef Knoff Illuminating

For: Anne M. Noonan
Commissioner

State File No. P-16619

RULING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

APPEARANCES:

Josef Knoff, *pro se*
William Blake, Esq., for Defendant

ISSUE:

Can Defendant apply a previously awarded credit of overpaid temporary total disability benefits against a new claim for temporary total disability benefits?

FINDINGS OF FACT:

I take judicial notice of the Commissioner's prior decision in this claim, *Joe Knoff v. Joe Knoff Illuminating*, Opinion No. 39-05WC (July 12, 2005). In addition, the following facts are undisputed:

1. Claimant suffered a work-related injury to his neck in February 2000. Thereafter, Defendant paid temporary total disability benefits until March 2001, at which point the Department approved its discontinuance.
2. In April 2003 Claimant suffered a recurrence of his neck pain and requested that Defendant reinstate temporary total disability benefits. Defendant agreed to do so on a voluntary, without prejudice basis. Thereafter, it paid weekly benefits at the maximum compensation rate until September 2004. Payments during this period totaled approximately \$63,700.00.
3. In September 2004 Defendant filed a Notice of Intention to Discontinue Benefits (Form 27), which the Department approved. In the notice, Defendant listed two grounds for terminating temporary disability benefits. One of the grounds it alleged was that the income Claimant had received during the twelve weeks preceding the April 2003 recurrence constituted profits from the sale of his business rather than wages earned

during that period. As such, Defendant asserted, Claimant had not suffered any wage loss and therefore was not entitled to temporary total disability benefits.

4. Claimant appealed Defendant's discontinuance. After considering the evidence, the Commissioner ruled in Defendant's favor. *Joe Knoff v. Joe Knoff Illuminating*, Opinion No. 39-05WC (July 12, 2005). It thus determined that the benefits Defendant had paid from April 2003 through September 2004 in fact had not been owed.
5. Recognizing that Defendant's payments during the period in question had been made voluntarily and without prejudice, in reliance on 21 V.S.A. §651 the Commissioner also ruled that Defendant was entitled to a credit of \$63,700.00 (the total amount it had paid in temporary disability benefits during this period) "against any future compensation." *Joe Knoff v. Joe Knoff Illuminating*, *id.* at ¶8.
6. Claimant did not appeal the Commissioner's July 12, 2005 ruling.
7. In August 2005 the Hearing Officer clarified the Commissioner's ruling with respect to the types of benefits against which the credit it had awarded Defendant properly could be applied. The Hearing Officer declared that the credit definitely could not be taken against future medical benefits, and that it definitely could be taken against future permanent partial disability benefits. As to whether the credit could be applied against future temporary total disability benefits, the Hearing Officer stated, "If the carrier presents a persuasive case for such a credit and the Commissioner approves it," then a credit against these benefits would be allowed.
8. Claimant has been receiving monthly social security disability benefits on account of his neck injury since December 2005. In addition, beginning in April 2010 he worked intermittently as a substitute teacher, for which he was paid \$80.00 per day.
9. Claimant did not seek any further workers' compensation benefits causally related to either his 2000 injury or his 2003 recurrence until December 2010. At that point, Claimant notified Defendant that he was experiencing new symptoms, for which he sought a medical evaluation and treatment. Claimant also claimed entitlement to temporary total disability benefits.
10. Defendant denied Claimant's claim for temporary total disability benefits on the grounds that until its \$63,700.00 credit is exhausted it is not obligated to make payment.

DISCUSSION:

1. Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Samplid Enterprises, Inc. v. First Vermont Bank*, 165 Vt. 22, 25 (1996). The nonmoving party is entitled to all reasonable doubts and inferences. *State v. Delaney*, 157 Vt. 247, 242 (1991); *Toys, Inc. v. F.M. Burlington Co.*, 155 Vt. 44 (1990). Summary judgment is appropriate only when the facts in question are clear, undisputed or unrefuted. *State v. Realty of Vermont*, 137 Vt. 425 (1979).

2. Defendant seeks summary judgment in its favor. It asserts that given the undisputed facts presented here, it is entitled as a matter of law to a credit of \$63,700.00 against any claim for indemnity benefits, whether temporary total or permanent partial.
3. Claimant argues in response that the credit should not be applied to his current claim for temporary total disability benefits. He asserts that the overpayment upon which the credit was based resulted from Defendant's inordinate delay in determining the extent, if any, of his wage loss in 2003. As a result, he claims, Defendant did not deserve the credit. In addition, Claimant argues that to allow the credit to be taken against temporary total disability benefits will cause him to suffer undue financial hardship.
4. The applicable statute, 21 V.S.A. § 651, states:

Payments made by an employer or his insurer to an injured worker during the period of his disability . . . which, by the provisions of this chapter, were not due and payable when made, may, subject to the approval of the commissioner, be deducted from the amount to be paid as compensation.
5. The Supreme Court has validated the commissioner's authority to allow an offset to be taken against permanent partial disability benefits. *Bishop v. Town of Barre*, 140 Vt. 564, 579 (1982). In addition, the Commissioner has made clear that the offset applies only to compensation benefits paid directly to the claimant, and not to "medical, vocational rehabilitation or other benefits payable on his behalf." *Felion v. NSK Corporation*, Opinion No. 10-11WC (May 2, 2011). The legal question presented here, therefore, is simply whether, given the particular facts of this claim, the credit should be allowed against Claimant's temporary total disability benefits.
6. Encouraging insurers to voluntarily pay workers' compensation benefits during the investigatory phase of a claim promotes the State's public policy of compensating workers quickly for their work-related injuries. *Bishop v. Town of Barre, supra*. This policy ensures that injured workers are able to provide for their living expenses while they heal. *Orvis v. Hutchins*, 123 Vt. 18, 22 (1962). To deny an insurer an offset when an overpayment results would undermine this policy, by creating a disincentive for making voluntary, without prejudice payments. The offset should not be denied, therefore, unless there are equally strong public policy reasons against allowing it.
7. Claimant has failed to present sufficiently strong reasons here. His argument that because Defendant failed to promptly and properly investigate the basis for his wage claim the credit never should have been allowed might have been persuasive in the context of the 2005 proceedings before the Commissioner, but Claimant failed to raise it there. The doctrine of collateral estoppel precludes him from raising it at this point. *In re P.J.*, 2009 VT 5 at ¶¶8-15 (2009). This argument does not merit disallowing the credit against his temporary total disability benefits, therefore.

8. As for Claimant's assertion that the offset should be disallowed because of the financial hardship it will cause him, under the circumstances of this case this argument too is unpersuasive. Claimant's social security disability benefits provide him with another regular source of income sufficient to meet his basic living expenses. Understandably, supplementing that income with temporary total disability benefits likely would be helpful to him. However, the undisputed facts do not demonstrate such financial hardship as to justify awarding Claimant benefits to which he is not entitled.
9. Claimant himself admits that Defendant erred by presuming that he had suffered a wage loss in the weeks prior to his 2003 disability when in fact he had not. As a result, he received \$63,700.00 in workers' compensation benefits to which he was not entitled. Essentially Claimant already has been prepaid the benefits he now seeks. Given the undisputed facts and particular circumstances of this case, I cannot justify requiring Defendant to pay him again.

ORDER:

Defendant's Motion for Summary Judgment is hereby **GRANTED**. Defendant is entitled to apply the \$63,700.00 credit previously awarded against the temporary total disability benefits Claimant now seeks.

DATED at Montpelier, Vermont this 2nd day of June 2011.

Anne M. Noonan
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.