

AWARD
(Reversing Award and Decision of Administrative Law Judge)

Injury No.: 00-175808

Employee: Joseph Johnson
Employer: Kaiser Jewelry
Insurer: N/A
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

Introduction

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the briefs of the parties, and considered the whole record. Pursuant to § 286.090 RSMo, we reverse the award and decision of Administrative Law Judge Hannelore D. Fischer dated January 15, 2009. The January 15, 2009, Award after Remand, and the March 11, 2008, Award it incorporates, are attached hereto solely for reference.

Procedural History

This matter is before the Commission on employee's second Application for Review. This is a case of form over substance; Form WC-21, to be precise.

On March 11, 2008, the administrative law judge issued an award in this case. The administrative law judge found that employee failed to timely file his claim for compensation on a finding that it was filed June 9, 2003, more than three years after the alleged April 28, 2000, injury by accident. Employee filed a timely Application for Review with the Commission.

It appeared from employee's allegations (as contained in the Application and subsequent pleadings) that employee submitted a claim for compensation to the Division of Workers' Compensation (Division) on April 24, 2003, which form was rejected by the Division. Accordingly, we reversed the March 11, 2008, dismissal of the administrative law judge and remanded this matter to the Division to hold a hearing to afford the parties an opportunity to present evidence regarding the allegations and defenses set forth in the pleadings and to issue a new award.

On December 3, 2008, the administrative law judge heard this matter on remand. On January 15, 2009, the administrative law judge again dismissed employee's claim by re-adopting her March 11, 2008, Award.

File Date of Claim

At the remand hearing, the administrative law judge admitted into evidence employee's Exhibits A, B, and C, without objection from employer or the Second Injury Fund.

- Employee's Exhibit C is a Claim for Compensation submitted on behalf of employee and receipt-stamped by the Division on April 24, 2003. The Claim was submitted on Division Form WC-21 (11-95).

- Employee's Exhibit A is a letter dated April 28, 2003, on Division of Workers' Compensation letterhead and signed by a "Toby Graham." The letter identifies no title or position for Mr. Graham. The letter is addressed to employee's counsel. The text of the letter is reprinted in full below:

Re: Joseph Johnson
04/28/2000

The Division is unable to process the Claim for Compensation due to the following:

- Social Security number is missing
- The Division shows that this Social Security number belongs to a different person. Please correct number.
- Provide complete mailing address for the employee on line 1A and B.
- Complete date of injury or diagnosis (mth/day/yr) on line 3.

• The Division is no longer accepting the Claim forms you are using as of 02/01/2003. Enclosed is a copy of the Claim forms the Division is accepting.

- Provide the complete name and address for the employer(s) on line 9.
- Provide date of death on line 12.
- Provide the complete mailing address for the Dependents on line 13.
- Please add the attorney name on Item #18 and return it to the Division for processing.
- The attorneys' signature is missing from line 18.

Please return the original form with noted corrections; the original DWC date stamp will be used as the date of filing. If you have any questions, please contact our office.

- The Division returned employee's Claim for Compensation receipt-stamped April 24, 2003, with Mr. Graham's April 28, 2003, letter.
- Neither the Division's electronic records nor the Division's file forwarded to the Commission reveal that the employee's counsel submitted the claim on April 24, 2003, or that the Division returned the claim to employee's counsel with Mr. Graham's April 28, 2003, letter.
- On June 9, 2003, employee submitted a Claim for Compensation on Division Form WC 21-2. (There is further form designation but it is illegible because the imaged document was poorly scanned such that the information was not captured).

- The Division's electronic records reveal employee's claim for compensation was filed on June 9, 2003.

Discussion

The administrative law judge concluded that the, "entire argument over what was retained in the Division's file is a red herring." Nothing could be further from the truth. The determination of whether employee's claim is barred by § 287.430 RSMo depends upon whether the Division carried out its ministerial duties in this matter and whether the Division exceeded its statutory authority in returning employee's original Claim for Compensation without filing it.

Section 287.430 provides in relevant part:

Except for a claim for recovery filed against the second injury fund, no proceedings for compensation under this chapter shall be maintained unless a claim therefor is filed with the division within two years after the date of injury or death, or the last payment made under this chapter on account of the injury or death, except that if the report of the injury or the death is not filed by the employer as required by section 287.380, the claim for compensation may be filed within three years after the date of injury, death, or last payment made under this chapter on account of the injury or death.

Employer never filed a report of injury so the three year filing period is applicable in this case.

The Division's act of rejecting employee's April 24, 2003, Claim for Compensation violates not only the spirit but also the letter of the Workers' Compensation Law. This matter can be disposed by reference to two statutory provisions.

Section 287.550 RSMo provides:

All proceedings before the commission or any commissioner shall be simple, informal and summary, and without regard to the technical rules of evidence, and no defect or irregularity therein shall invalidate the same. Except as otherwise provided in this chapter, all such proceedings shall be according to such rules and regulations as may be adopted by the commission. (Emphasis added).

Section 287.800 RSMo provides:

All of the provisions of this chapter shall be liberally construed with a view to the public welfare, and a substantial compliance therewith shall be sufficient to give effect to rules, regulations, requirements, awards, orders or decisions of the division and the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto. (Emphasis added.)

The record before us establishes that employee filed a Claim for Compensation on a version of the Division's form WC-21. Although the Division would have preferred a new form, employee substantially complied with the provisions of § 287.420 RSMo. The Division violated § 287.800 RSMo by rejecting the April 24, 2003, claim because the rejection had the effect of declaring the claim inoperative, illegal or void due to what the Division perceived was an omission of a technical nature – not using the most up-to-date form provided by the Division. See *Graves v. O. F. Elliott, Inc.*, 197 S.W.2d 977 (Mo. 1946). The problems do not end there.

The Division's own regulation provides that claims on outdated forms will be processed. Division rule 8 CSR 50-2.020(5) (A) provides that, "[d]ivision forms must be submitted as an original document in the most current version. If a claim or answer to a claim is filed on an outdated form the division will process the claim or

answer, but may request the filing party to submit the form in the most current version." It was the Division, through Toby Graham, that failed to comply with its own regulation by failing to process the claim.

The act of rejecting a document intended to be a claim for compensation is the act of ruling on the claim. Only an administrative law judge has the authority to issue a ruling on the validity of a claim for compensation. See § 287.450 RSMo. Unless Toby Graham was an administrative law judge – and his letter does not suggest he is – Mr. Graham had no authority to determine employee's April 23, 2003, claim was invalid.

The form letter sent by Toby Graham was ambiguous in its request of employee. Nine of the ten options listed request a correction to the original form the Division is returning. Only the outdated form option requires a completely new form. "Please return the original form with noted corrections," is a clear instruction for how to complete a form that is missing information. It makes little sense when an entirely new claim on a different form is needed.

Due process mandates that employee be given notice and an opportunity to be heard by an administrative law judge before his claim is ruled invalid. See *Cox Health Sys. v. Div. of Workers' Comp. of the Dep't of Labor & Indus. Rels.*, 190 S.W.3d 623 (Mo. App. 2006) (Division cannot summarily reject applications by health care providers for direct payment where the authority to hear the applications lies with the administrative law judge).

The Division erred in failing to retain employee's April 24, 2003, Claim for Compensation in its files. Section 287.650.2(2) mandates that the Division keep such records for a minimum of ten years.

Records in cases that are submitted for hearing in the division shall include all documentary exhibits admitted as evidence at the hearing. Records in all other cases shall include all documents required to be filed with the division by this chapter or by rule of the division, medical reports or records which are relied upon by the administrative law judge or legal advisor in approving the compromise lump sum settlement, and copies of the compromise lump sum settlement. These records shall be kept and stored by the division for a minimum of ten years and shall include the originals or duplicate originals stored by electronic or other means approved by the division.

No clerk or bureaucrat employed by the Division of Workers' Compensation has the authority to determine the validity of claims. The Division of Workers' Compensation is required by law to maintain each record submitted to it pursuant to the Workers' Compensation Law. If there is any question about the validity of a claim, the matter should be decided by an administrative law judge.

Conclusion

The employee alleges he sustained an injury on April 28, 2000. Employer never filed a report of injury as required by § 287.380 RSMo, so employee had until April 28, 2003 to timely file his claim. § 287.430. Employee's claim for compensation filed on April 24, 2003, was filed within the period specified in § 287.430, and is not barred for that reason.

Award

We reverse the administrative law judge's conclusion that employee's claim is barred by § 287.430. We remand this matter to the administrative law judge with directions to enter a new award in light of our ruling that employee's claim is not barred by § 287.430.

Given at Jefferson City, State of Missouri, this 3rd day of September 2009.

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

Issued by DIVISION OF WORKERS' COMPENSATION

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AWARD AFTER REMAND

Employee: Joseph Johnson

Injury No. 00-175808

Before the
DIVISION OF WORKERS'
COMPENSATION
Department of Labor and Industrial Relations of Missouri
Jefferson City, Missouri

Dependents: N/A

Employer: Kaiser Jewelry

Additional Party: Second Injury Fund

Insurer: N/A

Hearing Date: February 19, 2008, December 3, 2008

Checked by: HDF/lsw

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No.
2. Was the injury or occupational disease compensable under Chapter 287? No.
3. Was there an accident or incident of occupational disease under the Law? See award.
4. Date of accident or onset of occupational disease: See award.

5. State location where accident occurred or occupational disease was contracted: See award.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? See award.
9. Was claim for compensation filed within time required by Law? No.
10. Was employer insured by above insurer? No insurance.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: See award.
12. Did accident or occupational disease cause death? No. Date of death? Not applicable.
13. Part(s) of body injured by accident or occupational disease: Not applicable.
 - Nature and extent of any permanent disability: Not applicable.
15. Compensation paid to-date for temporary disability: \$0.
16. Value necessary medical aid paid to date by employer/insurer? \$0.
17. Value necessary medical aid not furnished by employer/insurer? \$0.
18. Employee's average weekly wages: -
19. Weekly compensation rate: \$438.47/\$303.01.
 - Method wages computation: By Agreement.

COMPENSATION PAYABLE

21. Amount of compensation payable:
\$0.
22. Second Injury Fund liability: \$0.
23. Future Requirements Awarded: \$0.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Joseph Johnson

Injury No: 00-175808

Before the
DIVISION OF WORKERS'
COMPENSATION
Department of Labor and Industrial Relations of Missouri
Jefferson City, Missouri

Dependents: N/A

Employer: Kaiser Jewelry

Additional Party: Second Injury Fund

Insurer: N/A

Checked by: HDF/lsw

AWARD AFTER REMAND

The above-referenced workers' compensation claim was heard on December 3, 2008, as the result of an Order of remand dated September 24, 2008. (An original Order was dated September 18, 2008; a Correcting Order was issued on the 24th of September correcting a date but in no other matters changing the substantive content of the Order.) Memoranda were due by December 19, 2008.

The remand hearing was "to afford the parties the opportunity to present evidence regarding the allegations and defenses set forth in the pleadings described above" (the allegation that the claim was time barred and the assertion of a timely filing as the result of a "relation back" to an earlier filing).

Admitted into evidence were three documents, including Employee's Exhibit A, an April 28, 2003 Division of Workers' Compensation form letter signed by a Toby Graham, stating that the claim submitted utilized an outdated form and directing Mr. Robert Madsen, counsel for the employee, Mr. Johnson, to "Please return the original form with noted corrections; the original DWC date stamp will be used as the date of filing." Also admitted into evidence was Employee's Exhibit B, the original claim form date stamped by the Division of Workers' Compensation April 24, 2003. Admitted as Employee's Exhibit C is Mr. Madsen's original cover letter dated April 21, 2003, and date stamped April 24, 2003, by the Division of Workers' Compensation.

Mr. Madsen acknowledged in his brief to the Labor and Industrial Relations Commission filed in support of his Application for Review of the Award denying benefits of March 11, 2008, that the original claim file stamped April 24, 2003 "appears not [to have] been retained by the Division in its own file."

Mr. Madsen filed another claim dated June 9, 2003, unaccompanied by the original form as directed by Mr. Graham's form letter. Thus, there was no claim or form filed to which to relate back the June 9, 2003 claim.

The entire argument over what is retained in the file of the Division of Workers' Compensation is a red herring. Had Mr. Madsen attached the original claim form to his June 9, 2003 claim as directed, it would not only have been part of

the file maintained by the Division of Workers' Compensation, but would have caused the later claim to carry an April 24, 2003 filing date.

As a side note, the issue of the time bar of this claim as the result of the applicable statute of limitations is one that was initially brought up in the answer to the claim for compensation filed in June of 2003, as well as noted as one of the issues to be resolved by hearing at the inception of the hearing. Mr. Madsen had the opportunity to address this issue at the hearing of this claim. The hearing was left open only for the admission of a deposition of Dr. Seifert, not for any material for which Mr. Madsen failed to seek admission at the hearing.

The award of March 11, 2008, incorporated by reference herein, is not modified by the admission and consideration of the exhibits submitted at the hearing on December 3, 2008. While the newly admitted exhibits from Mr. Madsen do reflect correspondence with the Division of Workers' Compensation prior to the June 9, 2003 claim, the evidence is insufficient that Mr. Madsen preserved a timely claim filing.

Date: _____ Made by: _____

Hannelore D. Fischer
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Nasreen Esmail
Chief Legal Counsel
Division of Workers' Compensation

All references are to the 2002 Revised Statutes of Missouri, unless otherwise indicated.

This preference is even declared on the instructions to current form WC-21: "1. Updated Claim form to be used: The Division prefers that the current or updated version of the Claim for Compensation form WC-21 be used to file a Claim."