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Minnesota Supreme Court Affirms WCCA Award of .191 Attorney Fees

The Minnesota Supreme Court recently affirmed the Minnesota Workers' Compensation Court of Appeals (WCCA), holding an attorney is entitled to reasonable fees under Minn. Stat. §176.191 and the award of reasonable attorney's fees should cover the value of the attorney's representation, even time spent developing ultimately unsuccessful arguments. Hufnagel v. Deer River Health Care, et al., A17-2064 (Minn. 2018).

Hufnagel, working as a certified nursing assistant, sustained multiple work-related low back injuries. Her first injury occurred in 2009 while working for Deer River. In 2013, Deer River became Essentia Health-Deer River and changed workers' compensation insurers. She alleged additional injuries in 2014 and 2015 but Essentia denied liability stating her injury was merely a "continuation of the prior work injury from 2009 [with Deer River], which was under a different insurer." Hufnagel filed a Claim Petition against Deer River seeking benefits for the admitted 2009 date of injury. Deer River asked Hufnagel to add Essentia as a party. When Hufnagel refused, Deer River filed a motion to join Essentia which the compensation judge granted. Both employers and their insurers obtained multiple IMEs, each placing responsibility on the other.

Following trial, the compensation judge found the disputed medical care was reasonable and related to the 2009, 2014, and 2015 work injuries. While the compensation judge also found the 2009 injury continued to be a substantial contributing factor to the claimant's overall low back condition, the compensation judge denied apportionment between the injuries because the 2014 and 2015 injuries were temporary and the compensation judge held Essentia (the new employer) liable for TTD and medical benefits related to the 2014 and 2015injuries. Hufnagel's attorney filed a Statement of Attorney Fees requesting Roraff/Irwin fees, and, alternatively, fees under Minn. Stat. §176.191 subd. 1 (i.e., .191 fees). The compensation judge found Hufnagel's attorney failed to differentiate between the time spent on the 2009 injury and the time spent on the 2014 and 2015 injuries. The judge said that because this was not a dispute "primarily between insurers" and there were no benefits specifically awarded for the 2009 injury, Hufnagel's attorney was not entitled to .191 attorney fees. The judge awarded Hufnagel's attorney $8,000 in Roraff/Irwin fees, substantially less than the $31,120.47 in fees claimed.

Hufnagel's attorney appealed to the WCCA. The WCCA reversed and held the employers had "'rendered the apportionment a significant issue…and greatly increased the burden on the employee's counsel to provide effective representation' by seeking to place sole liability on each other." The WCCA said disallowing .191 fees denied Hufnagel's attorney "adequate compensation" for the representation provided. Furthermore, the WCCA concluded that when the compensation judge evaluated the claim for Roraff/Irwin fees, the compensation judge inappropriately treated the time spent in the 2009 injury as unreasonable. The WCCA vacated the compensation judge's order

on attorney fees and Essentia appealed to the Minnesota Supreme Court.

The Minnesota Supreme Court affirmed the WCCA. It found there was a dispute between Hufnagel's two employers and their insurers which would entitle her attorney to hourly .191 fees. The Court noted that under Minn. Stat. §176.191 subd. 1, when two or more such insurers dispute liability for benefits, the compensation judge must award attorney fees. (The statute uses the word “shall”.) The court held the dispute arose when Essentia denied liability. The court suggested that by denying liability, Essentia attempted to shift the burden to Deer River and this created “a dispute between two employers”, thus invoking Minn. Stat. §176.191 subd. 1. The court inferred that both employers/insurers conceded Hufnagel was entitled to benefits from somebody, but disputed which of them was responsible. It concluded that the efforts by the employers and insurers to shift responsibility to the other “greatly increased the burden” on Hufnagel's attorney and that he was entitled to receive reasonable .191 attorney fees.

The court also concluded Hufnagel's attorney was entitled to fees for time spent developing the 2009 injury. It found that “Although no compensation was awarded to the employee for the 2009 injury as a result of this litigation, the 2009 injury was directly related to the benefits the employee successfully obtained for the 2014 and 2015 injuries.” It found attorneys should be compensated for the preparation required to thoroughly represent clients, not just for time developing arguments that are ultimately successful. Thus, an award of reasonable fees should be adequate to compensate the attorney for the value of the representation provided, including the time reasonably necessary to thoroughly prepare. The court took pains to note that “an ‘adequate' and ‘reasonable' fee is not an excessive fee nor an award that compensates the attorney twice.”

OUR VIEW : We view Hufnage l as a fact-specific case which does not represent a departure from established Minnesota law. We do not believe it breaks any new legal ground in Minnesota Worker's Compensation cases nor does it expand the cases in which .191 fees may be payable. The key, in our view, is the Supreme Court's “inference” that both employers/insurers conceded the employee's claims were compensable and that the main issue was the allocation or apportionment of responsibility between them. We believe that an award of .191 fees is not appropriate in a case where there is a legitimate, substantive dispute about an employee's entitlement to the benefits claimed.

If you have questions regarding the Minnesota Supreme Court's decision or any other workers’ compensation issues, please contact the O’Meara Leer Wagner & Kohl Workers’ Compensation Group at (952.831.6544).