IN THE COURT OF APPEALS OF IOWA

No. 0-169 / 99-0869
Filed May 31, 2000

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CLERK SUPREME COURT

ADOLFO GONZALES,
Plaintiff-Appellant,

vs.

IBP, INC.,
Defendant-Appellee.

Appeal from the Iowa District Court for Dallas County, Peter A. Keller, Judge.

Plaintiff appeals from the district court ruling granting summary judgment in favor of defendant on plaintiff's claim defendant acted in bad faith in refusing to pay workers' compensation benefits. Plaintiff contends the court erred by finding defendant had a reasonable basis for denying payment of medical benefits. **REVERSED AND REMANDED.**

Jerry Jackson of Moranville & Jackson, P.C., West Des Moines, for appellant.

Robert D. Houghton and Theresa C. Davis of Shuttleworth & Ingersoll, P.C., Cedar Rapids, for appellee.

Heard by Streit, P.J., and Zimmer and Hecht, JJ.

HECHT, J.

Plaintiff Adolfo Gonzales appeals from a summary judgment entered in favor of IBP, Inc., in this action alleging bad faith failure to pay medical expenses pursuant to Iowa Code section 85.27. We reverse the district court judgment on the ground a genuine issue of material fact exists as to whether Gonzales's claim for medical benefits was fairly debatable.

I. **Background Facts and Proceedings.** Gonzales began his employment with IBP in September of 1990. His job, "de-fatting ham ends," was fast repetitive work that required the use of a knife to bone and trim the ham. On November 22, 1991, he reported an injury to his right arm and shoulder. He sought medical treatment and was diagnosed with carpal tunnel syndrome, tendonitis of the shoulder, and trauma to the long thoracic nerve. On November 29, 1991, Gonzales left his job at IBP and traveled to Mexico. He returned to this country and in May of 1992 began employment with Monfort, a Des Moines meat packer. In October of 1992, he represented he was able to repeatedly lift seventy pounds when he sought and obtained employment as a mail handler for the Bulk Mail Center.

On November 8, 1993, Gonzales filed a worker's compensation claim against IBP alleging entitlement to benefits for the November 22, 1991 injury to his right hand, arm, and shoulder. IBP denied liability on the claim, contending the condition alleged by the claimant was not causally connected to employment with IBP.

In December of 1994, Gonzales underwent right carpal tunnel release surgery and was off work from the Bulk Mail Center for four weeks.

By the time of the worker's compensation hearing on February 13, 1996, Gonzales had not worked for IBP in over four years. As indicated above, he had worked for at least two employers after leaving IBP, and had made a claim for worker's compensation benefits against one of them for an injury to the right arm and shoulder. During the interval between his last day of employment at IBP and the date of the worker's compensation hearing, Gonzales had been examined and treated by four physicians who connected his shoulder condition, at least in part, to the employment at IBP. As of the date of the hearing, however, none of the medical experts had opined the shoulder injury was permanent.

The deputy worker's compensation commissioner who presided at the hearing reviewed the opinions of the four doctors and found Gonzales did sustain a right shoulder injury in the course and scope of his employment with IBP. In her arbitration decision, the deputy awarded Gonzales healing period benefits, permanent partial disability benefits for the carpal tunnel condition, and medical expenses in the amount of $2768 for treatment of the shoulder injury. IBP subsequently paid the disability benefits and medical expenses.

Gonzales continued to obtain medical care for the shoulder injury from an authorized physician after the worker's compensation hearing. When medical bills for treatment of the shoulder injury for the period from August 2, 1995,[1]

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[1] Gonzales incurred medical expenses for treatment of the shoulder injury from August 2, 1995, through February 7, 1996, but the bills were not offered as exhibits during the February 13, 1996, worker's compensation hearing.

through September 9, 1996, were submitted to IBP for payment, the company denied liability for the expenses and advised providers to send the bills to the Bulk Mail Center.

Gonzales filed this action against IBP for bad faith failure to pay medical expenses for treatment of his shoulder injury. IBP filed a motion for summary judgment contending it had a reasonable basis for denying Gonzales's claim for medical benefits. The district court granted the motion.

II. Contentions of the Parties. In support of his contention IBP had no reasonable basis to deny the claim, Gonzales argues the arbitration decision established his right to future medical care for the shoulder injury. The decision clearly established the fact he suffered a temporary shoulder injury in the course and scope of his employment with IBP. Gonzales notes IBP did not appeal from the agency decision, and contends all future (post-hearing) reasonable medical treatment necessary to treat that injury is, as a matter of law, the responsibility of IBP under Iowa Code section 85.27.

IBP contends Gonzales's claim for medical treatment is fairly debatable as a matter of law. The company first notes it complied with the arbitration decision's order to pay $2768 for Gonzales's medical expenses. IBP also claims it reasonably refused to pay for additional right shoulder treatment because: (1) the commissioner had found the shoulder injury to be temporary in nature; (2) Gonzales had not worked for IBP since November 29, 1991, and therefore it could fairly debate whether treatment for the period from August 2, 1995 through September 9, 1996, was necessary to treat the temporary injury sustained in

1991; (3) Gonzales represented to a subsequent employer he could frequently lift seventy pounds; and (4) Gonzales made a claim against a subsequent employer for injury to his right arm and shoulder.

III. Standard of Review. Our standard of review is for errors at law. Iowa R. App. P. 4; *Bennett v. MC #619, Inc.*, 586 N.W.2d 512, 516 (Iowa 1998). Summary judgment is only appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c); *Sampson v. American Standard Ins. Co.*, 582 N.W.2d 146, 149 (Iowa 1998). In order to decide whether the moving party has met this burden, we review the record in the light most favorable to the party opposing summary judgment. *Hoffnagle v. McDonald's Corp.*, 522 N.W.2d 808, 811 (Iowa 1994). Under this standard, summary judgment is inappropriate if reasonable minds would differ on how the issue should be resolved. *Sampson*, 582 N.W.2d at 149. Evidence is substantial if a reasonable mind would accept it as adequate to reach a conclusion. *Stover v. Lakeland Square Owners Ass'n*, 434 N.W.2d 866, 873 (Iowa 1989).

IV. The Merits. In first-party bad-faith claims, the plaintiff must show (1) the absence of a reasonable basis for denying the claim, and (2) the defendant knew or had reason to know its denial was without a reasonable basis. *Kiner v. Reliance Ins. Co.*, 463 N.W.2d 9, 12 (Iowa 1990); *see also Thompson v. United States Fidelity & Guar. Co.*, 559 N.W.2d 288, 291 (Iowa 1997). In evaluating whether a reasonable basis for the denial existed, it is appropriate to determine whether a claim was properly investigated and whether the results of the

investigation were subjected to a reasonable evaluation and review. *Dolan v. Aid Ins. Co.*, 431 N.W.2d 790, 794 (Iowa 1988) (*citing Anderson v. Continental Ins. Co.*, 85 Wis. 2d 675, 692, 271 N.W.2d 368, 377 (1978).

In this case, Gonzales received medical treatment for a shoulder injury before the worker's compensation hearing. IBP denied liability for disability benefits and medical expenses arising from the injury. The arbitration decision found IBP liable for the shoulder injury and ordered it to pay the cost of the resulting medical treatment. Mr. Gonzales continued to receive treatment after the hearing from the same medical providers. We find it significant at the summary judgment stage that none of these providers opined the temporary injury had healed to the point medical treatment was no longer necessary prior to IBP's denial of the claim for additional medical benefits in this case. This fact alone raises a genuine issue of material fact as to whether IBP: (1) properly investigated Gonzales's claim for medical benefits; and (2) subjected the medical evidence to a reasonable evaluation and review before it denied the claim for ongoing medical treatment of the shoulder injury.

IBP asserts the district court correctly entered summary judgment because the shoulder injury was found to be temporary. The employer's obligation to provide reasonable medical services for a work-related injury is not contingent upon permanency of the injury. *See* Iowa Code § 85.27. Consequently, the fact Dr. Misol, a treating physician, opined the "palsy of the muscle will eventually go away as this is usually the case, and therefore, I would not feel comfortable attaching a permanency to this condition" less than six

weeks before the worker's compensation hearing, does not vitiate IBP's responsibility for the cost of ongoing treatment of the "temporary" injury. The summary judgment record does not establish as a matter of law that the shoulder condition treated by Dr. Misol shortly before the hearing, and for which IBP had been found liable, had "gone away" by the time IBP denied the claim.

IBP also defends the summary judgment on the ground the lapse of time between November of 1991, when Gonzales left its employment, and the 1996 denial renders the claim fairly debatable. The record before the worker's compensation commissioner obviously included this chronological information. The agency nonetheless found IBP liable for medical expenses resulting from the treatment of the temporary shoulder injury. Treatment of the injury by the same medical providers continued after the worker's compensation hearing. The question of whether such continuing medical services were necessary for the treatment of the temporary injury is within the realm of expert opinion. No medical evidence in the record evidences, at the time of IBP's denial, or at any later time up to the time of the submission of the motion for summary judgment which is the subject of this appeal, Gonzales had recovered from the shoulder injury such that no further medical services were required. The passage of time between termination of the IBP employment and the denial of the claim does not render the claim fairly debatable as a matter of law because the commissioner found IBP liable for the injury and the resulting necessary medical services notwithstanding the passage of time.

IBP also contends other factual evidence supports the district court's determination the claim was fairly debatable. Gonzales sustained, and made a worker's compensation claim for, an upper extremity and shoulder injury against a different employer after he left IBP's employment. He also represented to a subsequent employer he was able to lift as much as seventy pounds frequently. These facts were presented to the worker's compensation commissioner who found them insufficient to defeat IBP's liability for the temporary shoulder injury and the cost of medical services for its treatment. The same factual arguments do not shield IBP as a matter of law from liability for the ongoing medical treatment under Iowa Code chapter 85 in the absence of medical evidence that the temporary injury for which the company has been found liable had healed to the point medical care was no longer reasonably necessary when the claim was denied.

IBP failed in its motion and supporting documents to demonstrate the absence of a genuine issue of fact on the issue of whether IBP had a reasonable basis to deny the claim for medical services claimed by Gonzales in this case. In his resistance, Gonzales established IBP was found liable for the temporary shoulder injury and the cost of necessary medical treatment. In the absence of medical evidence tending to prove IBP's assertion the temporary injury healed to the point medical treatment is no longer necessary, a genuine issue of material fact remains for trial on whether IBP had a reasonable basis for denying the claim for all medical expenses submitted to it for payment after the worker's compensation hearing.

A genuine issue also remains for trial on the issue of whether IBP knew or should have known there was not a reasonable basis for its denial of the claim. As indicated above, IBP denied liability for all medical bills presented to it for payment after the hearing. The summary judgment record does not tend to prove the denial was based upon a medical report or opinion supporting a finding the temporary injury for which IBP had been adjudged liable had healed and was no longer in need of treatment. The employer's liability for medical services under Iowa Code section 85.27 has been described as a "lifetime" medical benefit. *Huntzinger v. Moore Bus. Forms, Inc.*, 320 N.W.2d 545, 547 (Iowa 1982). This description connotes the employer's liability for such services continues so long as medically necessary to treat the work-related injury. In the case before the court, the shoulder injury was administratively established to have occurred in the course and scope of Gonzales's employment. In view of that adjudication, IBP knew or should have known it could not deny liability for medical services for the injury unless it had a medical basis for the denial. We find no medical opinion in the summary judgment record tending to prove the shoulder injury, though deemed to be temporary as of the time of the February, 1996, hearing, had healed such that no further treatment was necessary when IBP denied the claim. Accordingly, IBP has failed to demonstrate the absence of a genuine issue of fact on both of the central liability issues in this bad faith case. We reverse and remand the case to the district court for trial.

REVERSED AND REMANDED FOR TRIAL.