

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
November 24, 2008 Session

THE HOLLAND GROUP v. AUDREY SOTHERLAND, ET AL.

**Direct Appeal from the Chancery Court for Bedford County
No. 26132 J. B. Cox, Chancellor**

**No. M2008-00620-WC-R3-WC - Mailed - February 18, 2009
April 24, 2009**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for a hearing and a report of findings of fact and conclusions of law. The employee filed a Request for Assistance with the Department of Labor and Workforce Development ("Department"), seeking medical treatment and temporary disability benefits for an alleged work injury. The Department ordered that treatment be provided and benefits paid. The employer filed this civil action in the Chancery Court of Bedford County against the employee and the Second Injury Fund ("Fund"). Subsequently, the Department ordered the termination of disability benefits. The employee filed her answer and a counterclaim against the employer. The Fund filed a motion for summary judgment, contending that the trial court lacked subject matter jurisdiction because the parties had not exhausted the benefit review process. The trial court granted the motion and dismissed the action. The employee has appealed. We conclude that the trial court lacked jurisdiction over the subject matter, and therefore affirm the judgment.

**Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right; Judgment of the Chancery Court
Affirmed**

ALLEN W. WALLACE, SR. J., delivered the opinion of the court, in which CORNELIA A. CLARK, J., and JON KERRY BLACKWOOD, SR. J., joined.

Wm. Kennerly Burger, Murfreesboro, Tennessee, for the appellant, Audrey Sotherland.

Kitty Boyte, Nashville, Tennessee, for appellee, The Holland Group.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael Moore, Solicitor General; Juan G. Villaseñor, Assistant Attorney General, for the appellee, Second Injury Fund of the State of Tennessee.

MEMORANDUM OPINION

Factual and Procedural Background

On June 27, 2005, Audrey Sotherland ("Employee") filed a Request for Assistance with the Department of Labor and Workforce Development seeking the Department's assistance concerning a neck injury. Employee claimed that her injury (a ruptured disk which required surgery) occurred at work on March 1, 2005. On December 27, 2005, a workers' compensation specialist, Allen Brown, ordered The Holland Group ("Employer") to pay Employee medical and temporary disability benefits for the claimed injury.

Thereafter, on January 20, 2006, Employer filed suit seeking a declaration of the parties' rights under the workers' compensation statutes. In its suit, Employer claimed that Employee was not entitled to the benefits ordered by Brown. Employer also claimed that it was entitled to be reimbursed by the Second Injury Fund for the benefits paid to Employee pursuant to Brown's order.

Employee filed a counterclaim, contending that she was entitled to benefits for the March 1, 2005 injury. The Fund, named as a party in Employer's suit, filed a motion to dismiss for lack of subject matter jurisdiction or, in the alternative, for summary judgment. The Fund's position was that the trial court lacked subject matter jurisdiction because the parties failed to exhaust the mandatory benefit review conference process and, in addition, the statute of limitations had expired. The Fund also maintained that Employer's suit for reimbursement was barred by the doctrine of sovereign immunity.

On February 24, 2006, Brown ordered that the previously ordered temporary disability benefits cease. Her medical benefits, however, were not terminated. According to Brown's order, Employee's physician, Dr. George Lien, had released her to return to light duty and Employer offered to put Employee to work consistent with her restrictions. However, Employee refused to return to work. Consequently, her temporary disability benefits were ordered terminated.

The trial court dismissed the case on the basis that the parties had failed to exhaust the benefit review conference process and, therefore, the court lacked subject matter jurisdiction. Employee has appealed, asserting that the trial court erred in dismissing the case. The Fund has raised an additional issue, asserting that, if the trial court erred in dismissing the action, sovereign immunity bars an action against it for reimbursement of temporary disability benefits.

Standard of Review

This appeal presents a purely legal issue. Our review is, therefore, *de novo* with no presumption or correctness afforded to the trial court's conclusions. *Gray v. Cullom Machine, Tool & Die, Inc.*, 152 S.W.3d 439, 443 (Tenn. 2004).

Analysis

Parties having a workers' compensation dispute involving injuries occurring after January 1, 2005, must exhaust an administrative mediation process known as a benefit review conference. *See* Tenn. Code Ann. § 50-6-203(a)(1) ("[n]o claim for compensation . . . shall be filed with a court

having jurisdiction to hear workers' compensation matters . . . until the parties have exhausted the benefit review conference"); Tenn. Code Ann. § 50-6-225(a)(1) ("in case of a dispute over or failure to agree upon compensation . . . the parties shall first submit the dispute to the benefit review conference process"); Tenn. Code Ann. § 50-6-239(b) ("parties to a dispute shall attend and participate in a benefit review conference that addresses all issues related to a final resolution of the matter as a condition precedent to filing a complaint with a court"). The benefit review conference has been described as a "nonadversarial, informal dispute resolution proceeding designed to mediate and resolve workers' compensation matters." *Lynch v. City of Jellico*, 205 S.W.3d 384, 391 (Tenn. 2006). The law is clear that "[o]nly when the parties cannot reach an agreement at the benefit review conference may they proceed to court." *Id.*¹

The legislature has authorized the Department to promulgate rules "concerning all aspects of the administrative process related to benefit review conferences." Tenn. Code Ann. § 50-6-239(d). The Department has exercised that authority by enacting rules providing that the benefit review conference process is "deemed exhausted only" if a workers' compensation specialist denies the claim as noncompensable, the parties settle the case, an "impasse report" is signed by a workers' compensation specialist, the parties complete private mediation, or the Department grants a waiver, none of which occurred in this case. *See* Tenn. Comp. R. & Regs. 0800-2-5-.09(1). Moreover, the benefit review conference process "shall not be deemed exhausted upon the occurrence of . . . [t]he filing of a Request for Assistance or a determination thereof on grounds other than noncompensability." Tenn. Comp. R. & Regs. 0800-2-5-.09(4).

In this case, Employee contends that she believed, based upon "lengthy and contentious contacts" between Brown and the parties that the benefit review process had concluded. She maintains that she had no reason to believe otherwise given that Employer had filed a lawsuit and Brown had terminated her temporary disability benefits. She cites *Welsh v. Universal Fasteners, Inc.*, 51 S.W.3d 196, 199 (Tenn. Workers' Comp. Panel 2000), where the Appeals Panel observed that "the statute of limitations was suspended or tolled during the period between the 'request for assistance[,] which amounted to a request for a benefit review conference . . . , and the date the employee's claim was denied.'" (Emphasis added). Employee also contends that certain forms used by the Department, namely Form C40-A (Request for Assistance) and Form C40-B (Request for Benefit Review Conference) are confusing.

The Fund responds that the parties did not attend and participate in a benefit review conference as required by the statutes cited above and, therefore, the case was properly dismissed. The Fund contends that Employee incorrectly equates filing a Request for Assistance with filing a request for a benefit review conference, and on that basis, asserts that because she filed a Request for Assistance she satisfied the requirement that the parties participate in a benefit review conference. The Fund points out, correctly, that the regulations clearly differentiate between a Request for Assistance and a request for a benefit review conference. It further notes that Brown's

¹It should be noted that parties are **required** to request that the Department hold a benefit review conference. Tenn. Code Ann. § 50-6-239(a) ("In all cases in which the parties have any issues in dispute, whether the issues are related to medical benefits, temporary disability benefits, or issues related to the final resolution of a matter, the parties shall request the department to hold a benefit review conference.")

orders dealt only with temporary disability benefits and medical benefits rather than a "mediation of all issues related to the final resolution of a claim," which is the purpose of a benefit review conference. Tenn. Comp. R. & Regs. 0800-2-5-.01(14). In addition, the Fund argues that adoption of Employee's position (that her belief that the benefit review conference process had been exhausted satisfied the statutory requirements) would effectively permit any party to conclude that the mandatory mediation process ends at a time of his or her choosing. According to the Fund, accepting such a view would eviscerate the requirement of a benefit review conference as a condition precedent to filing suit. Employer agrees with the Fund and adopts its argument on this issue.

We find the Fund's arguments to be persuasive. The regulations are not ambiguous as to the difference between a Request for Assistance and a Request for a Benefit Review Conference. A "Request for Assistance" is defined as a "request for a Workers' Compensation Specialist to gather information, analyze issues, facilitate resolution of disputed issues, and/or make a determination regarding temporary disability, medical benefits, causation, compensability and/or penalties." Tenn. Comp. R. & Regs. 0800-2-5-.01(13). There is no dispute that Employee filed a Request for Assistance. A "Request for Benefit Review Conference" is defined as "a request for mediation of all issues related to the final resolution of a claim." Tenn. Comp. R. & Regs. 0800-2-5-.01(14). The documents themselves differ from each other; they initiate entirely different proceedings; and those proceedings serve different purposes. It is undisputed that a request for a benefit review conference was not filed. The benefit review process was never initiated, and therefore was never exhausted. The trial court, therefore, did not have jurisdiction over the subject matter, and correctly granted the Fund's motion to dismiss. As a consequence of that conclusion, it is not necessary to address the additional issue raised by the Fund.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to Audrey Sotherland, and her surety, for which execution may issue if necessary.

ALLEN W. WALLACE, SENIOR JUDGE

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No. M2008-00620-SC-WCM-WC - Filed - April 24, 2009

ORDER

This case is before the Court upon the motion for review filed by Audrey Sotherland pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(A)(ii), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Audrey Sotherland, and her surety, for which execution may issue if necessary.

PER CURIAM

CLARK, J., NOT PARTICIPATING