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NO. 3-11-0866-WC

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

Appellee.

) Appeal from the
) Circuit Court of
) Will County.
)
) No. 11-MR-249
)
)
)
) Honorable
) Bobbi N. Petrungaro,
) Judge, Presiding.

Justices Hoffman, Hudson, Holdridge, and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The Commission's decision denying the claimant's petition for penalties and attorney fees is not against the manifest weight of the evidence.

¶ 2 The claimant, Gregg Butterfield, and the employer, New Lenox Fire Protection District, entered into a lump sum settlement contract under which the employer agreed to pay the claimant \$330,000 in full settlement of his claim for work-related injuries and to be responsible for and hold the claimant and his wife harmless from the claims and liens of the group health insurance carriers who had paid the claimant's medical bills awarded by the arbitrator. The claimant filed a petition for penalties and attorney fees claiming that the employer had unreasonably and vexatiously delayed payment of the claimant's award and his medical bills. The Illinois Workers' Compensation Commission (the Commission) denied the petition for penalties and attorney fees, and the Will County circuit court confirmed that decision. The claimant appeals from the order of the circuit court.

¶ 3 BACKGROUND

¶ 4 The claimant's original claim against the employer is for injuries he received on April 24, 1994, when working as a volunteer firefighter. On May 16, 2007, the Commission approved the lump sum settlement contract between the claimant and the employer, including their addendum, which provided in pertinent part as follows:

"Respondent [the employer] to pay and petitioner [the claimant] to accept \$330,000 in full and final settlement of any and all claims under the Illinois Workers' Compensation and Occupational Disease Acts for all accidental injuries ***. *** This

settlement includes liability for TTD, TPD, PPD, and all medical, surgical, and hospital expenses, past or future, for all of which petitioner expressly assumes responsibility. ***

Respondent, New Lenox Fire Protection District, agrees to be responsible for the liens and claims for all medical bills awarded by the arbitrator in the *** arbitration decision rendered on or about January 10, 2005[,] including but not limited to the claims and liens of the group health carriers which paid the awarded bills including Blue Cross/Blue Shield of Alabama and Accent/Core Source and their agents, assigns, representatives, affiliates and successors and further agrees to hold Gregg Butterfield and Sandra Butterfield harmless and defend and indemnify them from any action for reimbursement filed or brought by the group health carriers who had paid the medical bills awarded by the arbitrator." (Emphasis in original.)

¶ 5 On July 16, 2007, the claimant filed a petition for penalties pursuant to section 19(k) of the Illinois Workers' Compensation Act (the Act) (820 ILCS 305/19(k) (West 2006)) and for attorney fees pursuant to section 16 of the Act (820 ILCS 305/16 (West 2006)). In the petition, the claimant alleged that he had faxed a copy of the approved lump sum settlement contract to the employer's attorney and had mailed him a copy on May 22, 2007, but that the employer had "failed to forward the settlement check" to him. The claimant attached several exhibits to the petition, including letters from his attorney to the employer's attorney, dated June 25, July 3, and July 10, 2007, each of which notified the employer that he had not yet

received the settlement check. The employer issued the \$330,000 settlement check to the claimant on July 16, 2007, and the claimant received it on July 20, 2007. On or about August 29, 2007, the claimant withdrew his petition for penalties and attorney fees.

¶ 6 On February 4, 2008, the claimant filed an amended petition for penalties and attorney fees. In the amended petition, the claimant again asserted his right to receive section 19(k) penalties for delay in paying the lump sum award even though he acknowledged that he had received the settlement check on July 20, 2007. The claimant also alleged that, in November 2007, his attorney had been "contacted by the group health carriers inquiring as to the status of their liens." The claimant asserted that his attorney had notified the employer's attorney that the claimant's medical bills, which totaled \$71,977, were still unpaid as of January 28, 2008. In his brief in support of the petition, the claimant alleged that on February 1, 2008, at the request of the employer's attorney, his attorney provided the employer with the names, addresses, and telephone numbers for the contact personnel for the group health insurance carriers. The claimant acknowledged that a portion of the medical bills were paid on May 23, 2008.

¶ 7 In its response to the claimant's amended petition, the employer explained that its insurer had mistakenly issued a settlement check to the claimant in the amount of \$33,000 but that the mistake was discovered before the check was placed in the mail. The employer also alleged that, when the check was re-issued for the correct amount of \$330,000, a person without the proper authority had signed the check. The employer asserted that a "check in

the proper amount and issued by the proper person was issued on or about July 16, 2007."

The employer also argued that the claimant "recognized the lack of vexatious conduct and withdrew his petition for fees and penalties on or about August 29, 2007."

¶ 8 Regarding the unpaid medical bills, the employer argued that it had agreed to be responsible for the medical bills awarded by the arbitrator because those bills "were old and many had been paid by group health insurance." The employer contended that its agreement to be responsible for the bills and to hold the claimant and his wife harmless from and indemnify them from the medical bills was not the same as an agreement to directly pay the medical bills. The employer asserted that the claimant's attorney understood the difference between an agreement to pay the bills and an agreement to be responsible for them because "in fact she required language" that the employer would hold the claimant and his wife harmless. The employer alleged that the claims representative, Sharon Barnes, "engaged in negotiations with the various medical care providers and the group carriers to resolve their bills," that Ms. Barnes had reached a tentative agreement to settle the lien from Blue Cross/Blue Shield, and that there had been no delay in payment of the awarded medical bills. The group health carriers had not filed any legal action against the claimant.

¶ 9 On February 9, 2009, the Commission conducted a hearing on the claimant's amended petition. At that hearing, the claimant's attorney acknowledged that the claimant had received the \$330,000 settlement check on July 20, 2007, and that all of the medical bills had been paid before the hearing. The attorney argued, however, that the employer's delay in

issuing the settlement check and paying the medical bills was unreasonable and vexatious and entitled the claimant to an award of "penalties in the amount of 50 percent of the settlement, which comes to \$200,988.50 and attorney fees of 20 percent of the penalty amount, which comes to \$40,197.70."

¶ 10 On February 16, 2011, the Commission issued its decision denying the claimant's amended petition for penalties and attorney fees. The record is silent as to the reason for the two-year gap between the hearing before the Commission and its decision. Regarding the delay in the employer's payment of the claimant's award, the Commission found that the claimant received the check for \$330,000 within 59 days after the employer's attorney received a copy of the approved lump sum settlement contract. The Commission noted that, after the claimant received the settlement check, it appeared that he "was satisfied with matters" since he did not continue to pursue the issue of penalties and fees. Based on these findings, the Commission declined to award penalties and attorney fees for any delay in payment of the lump sum award.

¶ 11 With respect to the medical liens, the Commission agreed with the employer's argument that "an agreement to be responsible for medical bills and hold a claimant harmless from such bills is different from an agreement to affirmatively pay certain bills." The Commission found, "It appears the intent of the parties when they used the word 'responsible' was that [the employer] would hold [the claimant] and his wife 'harmless and defend and indemnify them from any action for reimbursement filed or to be brought by the group health

carriers who had paid the medical bills awarded by the arbitrator.' " The Commission determined that none of the medical providers had initiated any collection activity against the claimant or his wife and that the employer had "taken 'responsibility' for the liens from Blue Cross/Blue Shield and Accent" and had resolved any disputes with those entities. The Commission ruled that, although there had been "some passage of time in the resolution" of the liens, there was insufficient evidence from which it could find that the employer's conduct warranted the imposition of penalties and fees.

¶ 12 Commissioner Molly C. Mason filed a partial concurrence and dissent. Commissioner Mason concurred in the denial of the request for penalties and fees for the delay in payment of the claimant's award, but she dissented on the issue of penalties and fees for the delayed medical payments. Commissioner Mason stated that by accepting responsibility for the payment of the medical bills, the employer had agreed to satisfy the liens, and its delay in paying those bills entitled the claimant to penalties and attorney fees.

¶ 13 On review, the circuit court found that there was evidence to support the decision of the majority of the Commission and that it was not against the manifest weight of the evidence. The circuit court confirmed the Commission's decision, and the claimant filed a timely notice of appeal.

¶ 14 ANALYSIS

¶ 15 The claimant argues that the Commission's denial of his petition for penalties and attorney fees is against the manifest weight of the evidence. The Claimant's request for

penalties is governed by section 19(k) of the Act, which provides, in relevant part, as follows:

"In [a] case where there has been any unreasonable or vexatious delay of payment ** of compensation, *** then the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award." 820 ILCS 305/19(k) (West 2010).

The claimant's request for attorney fees is governed by section 16 of the Act, which provides, in relevant part, as follows:

"Whenever the Commission shall find that the employer *** has been guilty of delay or unfairness towards an employee in the adjustment, settlement or payment of benefits due such employee ***; or has been guilty of unreasonable or vexatious delay, ***within the purview of the provisions of paragraph (k) of Section 19 of this Act, the Commission may assess all or any part of the attorney's fees and costs against such employer and his or her insurance carrier." 820 ILCS 305/16 (West 2010).

¶ 16 The dual purpose of awards of penalties and attorney fees pursuant to sections 19(k) and 16 is to promote prompt payment of compensation and to deter employers and insurance carriers who might otherwise withhold payment for less than legitimate reasons. *Jacobo v. Illinois Workers' Compensation Comm'n*, 2011 IL App (3d) 100807WC, ¶ 23, 959 N.E.2d 772, 778. When the employer has delayed payment of compensation, it has the burden to show that it reasonably believed that the delay was justified. *Roodhouse Envelope Co. v. Industrial Comm'n*, 276 Ill. App. 3d 576, 579, 658 N.E.2d 838, 840 (1995). "The employer

has the burden of justifying the delay, and the employer's justification for the delay is sufficient only if a reasonable person in the employer's position would have believed that the delay was justified." *Jacobo*, at ¶20, 959 N.E.2d at 777-78. Section 19(k) "is intended to address situations where there is not only delay, but the delay is deliberate or the result of bad faith or improper purpose." *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 515, 702 N.E.2d 545, 553 (1998).

¶ 17 The law is settled that the decision of whether an employer has acted unreasonably or vexatiously by refusing to pay benefits is a question of fact to be determined by the Commission, whose decision will not be disturbed unless it is against the manifest weight of the evidence. *Roodhouse Envelope Co.*, 276 Ill. App. 3d at 579, 658 N.E.2d at 840. "On questions of fact, the Commission's decision is against the manifest weight of the evidence only if the record discloses that the opposite conclusion clearly is the proper result." *Beelman Trucking v. Illinois Workers' Compensation Comm'n*, 233 Ill. 2d 364, 370, 909 N.E.2d 818, 822 (2009).

¶ 18 In the case before us, the Commission accepted as reasonable the employer's justification for its delay in paying the \$330,000 lump sum settlement. The employer asserted that clerical errors delayed issuance of a properly signed check in the correct amount, and the Commission accepted that explanation. Additionally, the Commission found that, after the claimant received the settlement check, he appeared to be satisfied since he withdrew his petition for penalties and fees.

¶ 19 After the claimant filed his amended petition for penalties and attorney fees, he added allegations regarding the delay in the payment of his medical bills. In their pleadings before the Commission, both the claimant and the employer alleged facts about the negotiations regarding payment of the medical bills. The claimant and the employer provided each other with names and contact information in order to further those negotiations. By the time the claimant filed the amended petition for penalties and fees, one of the liens had been paid, and by the time of the hearing before the Commission, all outstanding medical bills and liens had been paid. The entities seeking payment for those bills contacted the claimant's attorney but did not institute any legal action against the claimant or his wife. The Commission found that the employer had fulfilled its agreement to be responsible for and hold the claimant and his wife harmless from the medical bills. The record supports the Commission's decision.

¶ 20 In their addendum to the lump sum settlement contract, the parties made a distinction between the settlement and the medical bills. The parties agreed that the employer would "pay" and the claimant would "accept \$330,000 in full and final settlement of any and all claims *** for accidental injuries ***." (Emphasis in original.) In contrast, the parties agreed that the employer would "be responsible for the liens and claims for all medical bills" and that the employer would hold the claimant and his wife "harmless and indemnify them from any action for reimbursement filed or to be brought by the group health carriers who had paid the medical bills ***." By the terms of their agreement, the parties distinguished the payment of the settlement amount from the responsibility for the medical bills. The

parties agreed that the employer would pay an exact amount for the claimant's accidental injuries but did not state the amount of the medical bills or require the employer to pay a specific amount for the bills but only to be responsible for them. By agreeing that the employer would hold him and his wife harmless from and indemnify them from the medical bills, the claimant essentially agreed that the employer would ultimately pay those bills, possibly *after* an "action for reimbursement" was filed. The claimant worked with the employer as it negotiated the medical bills. The claimant was not harmed by the delay in payment because he was not required to pay the medical bills himself. Further, no collection action was initiated against the claimant to obtain payment of the bills. Therefore, the employer fulfilled its obligation under the addendum as it applied to the medical bills. The Commission had evidence from which it could find that the delay was not unreasonable, vexatious, deliberate, or the result of bad faith or improper purpose. *McMahan*, 183 Ill. 2d at 515, 702 N.E.2d at 553. The Commission's decision denying the claimant's petition for penalties and attorney fees is supported by the record and is not against the manifest weight of the evidence.

¶ 21

CONCLUSION

¶ 22 For the foregoing reasons, we affirm the circuit court's order confirming the Commission's denial of the claimant's amended petition for penalties and attorney fees.

¶ 23 Affirmed.