2007

Dale T. Smith & Sons v. Utah Labor Commission, and Jeffrey D. Smith: Reply Brief

Utah Court of Appeals

BEFORE THE SUPREME COURT OF UTAH

DALE T. SMITH & SONS, and WORKERS COMPENSATION FUND Petitioners, v UTAH LABOR COMMISSION, and JEFFREY D. SMITH Respondents.	* * * * * * * * * * *	Appellate No. 20070848

REPLY BRIEF OF PETITIONERS

On Writ of *Certiorari* from the Utah Court of Appeals

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Treatises

ARGUMENT

I.

THE *TAYLOR* CASE DEMONSTRATES THAT THE SUPREME COURT CAN ADOPT A BROADER DEFINITION OF "COMPENSATION" THAT INCLUDES MEDICAL EXPENSES

This court concluded in *Taylor v. Industrial Commission*, 743 P.2d 1183 (Utah 1987) that "compensation" includes payment of medical expenses. *Id.* at 1185-1186. In arriving at this conclusion this court cited Professor Larson's treatise on workers compensation law, which states specifically: "the Compensation Expenditure. . .includes not only wage benefits...but hospital and medical payments as well. . .it is the correct result even if the reimbursement provision speaks only of 'compensation' paid." *Id.* at 1186 (quoting 2A A. Larsen, Workers' Compensation Law § 74.33). Despite this specific and straightforward language cited in *Taylor*, claimant contends that this court did not hold that "compensation" includes medical benefits. In *Taylor,* however, the context of the then version of Section 34A-2-106 (2005)[1] required this court to adopt a broader interpretation of "compensation" to include medical benefits in order to prevent double recovery of medical benefits in third party actions. Indeed, if the employer and/or insurance carrier were not "liable" for medical expenses as "compensation", then, under claimant's interpretation of Section 34A-2-106, medical expenses could not be subrogated at all because they are not specifically

[1] The version at the time was Utah Code Ann. § 35-1-62 (Supp. 1987).

mentioned in the statute. As discussed in WCF's opening brief, the *Taylor* decision demonstrates that this court can and does apply the more general definition of "compensation" outlined in Section 34A-2-102(3), depending on the context of the statute.

Claimant believes that the court of appeals properly relied on *Kennecott Copper Corp. v. Industrial Commission*, 597 P.2d 875 (Utah 1975) and *Christensen v. Industrial Commission*, 642 P.2d 755 (Utah 1982) to reach the conclusion that medical expenses are not "compensation" subject to apportionment under Section 34A-3-110 of the Utah Code. However, as argued in WCF's opening brief, the circumstances of both *Kennecott* and *Christensen* are distinguishable from the instant case. Those cases both involved interpretation of the statute of limitations. If the more general definition of "compensation" had been used in that context, it would have rendered the separate statute of limitations for indemnity benefits meaningless because medical benefits, under the then workers compensation scheme, could persist indefinitely. As a result, this court considered medical benefits separately from "compensation" for this one narrow purpose. The context of the statute of limitations in relation to the indemnity benefits statute and the inherent conflict between the two required a more narrow definition of "compensation" in order to give meaning and effect to both statutes.

The *Taylor* case was decided after both *Kennecott* and *Christensen* and yet this court still applied the more general definition of "compensation." This is a clear indication that the narrow definition of "compensation" used in *Kennecott*

was not to be applied to all future interpretations of the word "compensation" outside of the context of the statute of limitations, or some other context where a more narrow definition is appropriate. In the instant case, there is no conflict created by applying the more general definition of "compensation" under Section 34A-2-102(3). It was unnecessary for the court of appeals and Labor Commission to have reverted to the rule of statutory construction in *Kennecott* and *Christensen* to resolve a conflict between statutes.

Finally, claimant argues that a lack of a legislative amendment to the term "compensation" in the Utah Labor Code since the *Kennecott* and *Christensen* decisions signifies an implicit adoption of the narrow definition of "compensation" used in those cases. Using this same reasoning, the general definition of "compensation" used in *Taylor* should govern because it was decided after *Kennecott* and *Christensen* and there has been no legislative amendment changing that definition since. The legislature, however, has had no reason to amend the term "compensation" because it has a general definition of that term in Section 34A-2-102(3) of the Workers Compensation Act.

II.

BASED UPON THE DEFINITION OF "DISABILITY" IN SECTION 34A-2-102(6), THE TERM "COMPENSATION" IN SECTION 34A-3-110 DOES INCLUDE MEDICAL EXPENSES

The Workers Compensation Act defines "disability" as "an administrative determination that may result in an entitlement to compensation as a consequence of becoming medically impaired as to function. Disability can be total or partial, temporary or permanent, industrial or nonindustrial." Utah Code Ann. § 34A-2-102(6) (emphasis added). This definition of "disability" also applies to "payments and benefits provided for in . . . [the] Occupational Disease Act." *Id.*, Subsection (3). This definition of disability includes the term "compensation", which, as fully argued in WCF's opening brief, also includes medical expenses.

Claimant argues that medical expenses are not included in Section 34A-3-110 because that section only uses the terms "disability" or "death." However, as discussed in WCF's initial brief, under the Occupational Disease Act, a cause of action for occupational disease arguably does not even arise until the employee has suffered a disability. Utah Code Ann. § 34A-3-108(2)(b) (2005). Section 34A-3-107 provides that "the disabled employee is entitled to medical, hospital and burial expenses . . .," *Id.* § 34A-3-107(2) (emphasis added), which implies that the employee must be disabled before he is entitled to any benefits under the Occupational Disease Act.

If a cause of action under the Occupational Disease Act does not arise until an employee has suffered a disability, then a more general definition of disability as a loss of bodily function, as opposed to disability from employment, makes more sense. In fact, this general definition of "disability" has arguably already been adopted by the legislature in Section 34A-2-102(6), which defines disability, in part, as being "medically impaired as to function." *Id.* § 34A-2-102(6). The statute makes no mention that a loss of work is required for an employee's injury to be considered a disability. If the term disability required loss of work, then an employee who suffers an occupational disease and only seeks payment of medical expenses would not have a cause of action to recover those benefits because he has not yet lost work as a result. It is doubtful that the legislature intended this result.

WCF agrees that had the legislature specifically included the phrase "medical care and treatment" along with "disability" or "death" in Section 34A-3-110, then this appeal would be unnecessary. However, the legislature has given adequate guidance in both the Occupational Disease Act and the Workers Compensation Act to demonstrate that the term "disability" in section 34A-3-110 does indeed include apportionment for medical expenses.

III.

THERE IS NO LEGITIMATE REASON TO DEPART FROM THE GENERAL DEFINITION OF "COMPENSATION" UNDER SECTION 34A-3-110

If there is no legitimate reason to depart from the general definition of "compensation" in 34A-2-102(3) under Section 34A-3-110, then the general definition should apply. Claimant cites eight provisions in the Utah Labor code that he contends distinguish medical benefits from compensation benefits. Claimant then argues that this same distinction should be made throughout the whole Utah Labor Code where the term "compensation" appears. However, as argued in WCF's opening brief, this court should only depart from the general definition of "compensation" outlined in 34A-2-102(3) when there is a legitimate reason to do so. WCF agrees that within the context of the eight provisions cited, a narrower definition of "compensation" is appropriate. However, claimant has failed to adequately demonstrate a legitimate reason why the context of "compensation" in Section 34A-3-110 requires a more narrow definition.

In fact, one should come to a completely opposite conclusion as claimant in interpreting the eight statutes cited in his brief. These eight citations demonstrate that medical expenses should only be considered separate from "compensation" when the legislature has specifically drafted such a separation in the statute itself. This interpretation lends support to the argument that only the general definition of "compensation" outlined by the legislature in section 34A-2-102(3) should apply

unless the legislature itself has specifically deviated from that definition within a specific statute itself or if this court deems there is a good reason to do so. The general definition of "compensation" should apply in the instant case since the legislature has not specifically separated medical expenses from the term "compensation" in 34A-3-110 and the claimant has failed to adequately demonstrate a good reason for deviation from the general definition.

Petitioners also contend that there are provisions of the Utah Labor Code that require the more general definition of "compensation" under Section 34A-2-102(3). Indeed, the Utah Supreme Court applied the more general definition of "compensation" when it held in *Taylor v. Industrial Commission*, 743 P.2d 1183, 1185-1186 (Utah 1987), that under Section 35-1-62[2], "compensation" does include medical expenses.

IV.

SINCE THE WORKERS COMPENSATION ACT AND THE OCCUPATIONAL DISEASE ACT ARE SEPARATE ACTS, THE ANALYSIS OF THE UNIFORM APPLICATION OF LAWS CLAUSE OF THE UTAH STATE CONSTITUTION IS UNECESSARY

Claimant, for the first time, has argued equal protection or uniform operation of laws should be applied in this case. The equal protection and uniform operation of laws argument was not considered by this court in granting certiorari in the instant case. Nevertheless, since this court can affirm on any grounds, even

[2] Now codified as Utah Code Annotated § 34A-2-106.

one not considered by the court of appeals or Labor Commission, WCF now addresses that issue.

Claimant notes that although there is apportionment under the Workers Compensation Act for permanent partial disability benefits, medical expenses are still paid in full for those workers. Claimant argues that to deny full payment of medical expenses to workers covered under the Occupational Disease Act whose compensation is apportioned under 34A-3-110 would violate uniform operation of laws and equal protection. The two Acts, however, operate under different schemes to determine benefits of workers suffering from a workplace accident or those suffering from an occupational disease. For example, in the industrial accident scheme, this court has created the *Allen* test, which is used to determine legal causation when an injured worker "suffers" from a preexisting condition. *Allen v. Industrial Commission* 729 P.2d 15, 25-27 (Utah 1986). If legal causation, along with medical causation, is shown, then, under the *Allen* test, medical expenses are paid in full. There is no similar test to establish legal causation of an occupational disease under the Occupational Disease Act. Indeed, in A*costa v. Labor Commission*, 2002 UT App 67, 44 P.3d 819, the Utah Court of Appeals apparently recognized that, had the claimant there filed her claim as an occupational disease (cumulative trauma), she would not have had to show legal causation. *Id.*, ¶¶ 4, 31, 44 P.3d at 821, 826-27.[3] Absent such a test to establish

[3] The court of appeals concluded that the ALJ had improperly raised the theory of cumulative trauma *sue sponte*. *Id.*, ¶¶ 33-34, 44 P.3d at 827.

legal causation of an occupational disease, medical expenses should be apportioned under 34A-3-110 just as is done with the other types of compensation in that section. There is no issue of uniform operation of laws because the Workers Compensation Act and the Occupational Disease Act clearly operate under differing schemes and are distinguishable from one another. Since the Workers Compensation Act and the Occupational Disease Act are two separate acts, the analysis of Uniform Operation of Laws is unnecessary. It is true that the two acts together provide the exclusive remedy for workers that are injured by an accident or occupational disease from their employment. They also share some definitions and provisions, but they are still considered separate acts.

The claimant wrongly assumes that the individuals injured by a workplace accident covered in the Workers Compensation Act and the individuals suffering from an occupational disease covered in the Occupational Disease Act are one and the same. It is doubtful that the legislature would have passed two separate Acts if the two different classes created in each act were to be considered the same. The legislature has kept these two acts separate. Thus, the classes of individuals created in the two acts must be considered separate for a uniform operation of law analysis.

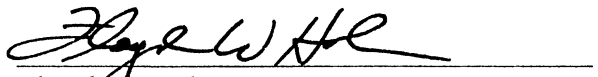
Claimant would have this court conduct a uniform operation of laws analysis by comparing the operation of two separate acts. Petitioners are unaware of an instance in which the Utah Supreme Court has conducted a uniform operation of laws analysis by comparing classes of individuals that fall under two

separate Acts. The Clause appears only to require uniform operation of the provisions of a single act to the class of individuals created within that single act. There is no issue in the instant case whether individuals covered under the Occupational Disease Act are treated differently from one another. There is simply no need for this court to conduct a uniform operation of laws or equal protection analysis.

CONCLUSION

Based upon the above discussion, this court should reverse the court of appeals and remand the case to the Labor Commission for further proceedings.[4]

RESPECTFULLY SUBMITTED this 30th day of April, 2008.



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[4] As already noted, WCF has argued that since there is a dispute in the medical evidence regarding the extent of apportionment, that issue should be referred to a medical panel under Section 34A-2-601 of the Utah Code

MAILING CERTIFICATE

I hereby certify that on the 30th day of April, 2008, two true and correct copies of the attached **Reply Brief of Petitioners** in the above-entitled matter, were mailed, postage pre-paid to the following:

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