74413-5

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No. 74413-5

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

LORIANN HULL,

Appellant

v.

PEACEHEALTH,

Respondent.

APPELLANT'S REPLY BRIEF

NATHAN T. DWYER
ROBINSON & KOLE
911 DUPONT STRETT
BELLINGHAM, WA 98225
(360) 671-8112

ADDITIONAL AUTHORITIES

Cases

A. When a Worker Reasonably Relies on the Advice of her Doctors, the Consequences of Treatment are Compensable, Even if the Treatment Later Turns Out to be Ill-advised or Not Necessitated

PeaceHealth argues in its brief that "the claimant is clearly trying to use PeaceHealth's payment of medical treatment to show it is responsible for a host of conditions that would otherwise not be covered under her workers' compensation claim." Respondent's Brief, at 16. PeaceHealth mischaracterizes Ms. Hull's argument as providing payment equates to responsibility for a condition. These are not her arguments. The arguments are based on well-established law in this area that PeaceHealth has either ignored or is asking this Court to overturn.

The Washington Supreme Court held that conditions resulting from treatment for an industrial injury are considered part and parcel of the injury itself. Anderson v. Allison, 12 Wn.2d 487, 122 P.2d 484 (1942); Ross v. Erickson Construction Co., 89 Wash. 634, 155 Pac. 153 (1916). See also In re Arvid Anderson, BIIA Significant Decision, Docket No. 65, 170 (1986). "Surgical treatment is an incident to every case of injury or accident and is covered as part of the subject treated...When a workman is hurt and removed to a hospital or is put under the care of a surgeon, he is still, within every intendment of the law, in the course of employment." Ross at 647.

"It is well-established that when ... the worker reasonably relies on the advice of her doctors, the consequences of treatment are compensable, even if the treatment later turns out to be ill-advised or not necessitated by a condition covered under the claim." In re Ladonia Skinner, BIIA Significant Decision, Docket No. 14 10594 (2015). There is an exception when a worker has been informed that the treatment she wishes to pursue has been denied and then proceeds at her own risk and is not entitled to any resulting benefits. In re Iva Labella, BIIA Significant Decision, Docket No. 89 3586 (1991).

The exception does not apply here as there was no evidence presented that PeaceHealth or the Department denied the condition until 2013, four years after the surgeries occurred in 2009. CP at 6, 241-247. In fact, the only evidence presented at hearing was that the surgery was in fact authorized and paid for by PeaceHealth, yet PeaceHealth argues that the Court should not consider this. There is no evidence that Ms. Hull did anything other than simply follow the advice of her providers as to what conditions were related, and the best course of care. There was no intervening cause of her need for surgery, simply an unbroken sequence of events set in motion by her work activities at PeaceHealth.

Despite Ms. Hull not filing a malpractice claim, PeaceHealth acknowledges that all conditions under consideration, except the mental

health condition, were secondary negative outcomes from the thoracic outlet surgeries. Respondent's Brief, at 14. The law is well established in this area as well. "The aggravation by malpractice of an injury does not become an intervening cause of damages, but is incidental to the original injury...Where the chain of causation between an accidental injury and the ultimate disability remains unbroken, an injured employee is entitled to statutory compensation for the ultimate injury resulting from the accidental injury, though the injury has been aggravated by intervening malpractice." Anderson v. Allison at 492-493, citing Carmichael v. Kirkpatrick, 185 Wash. 609, 56 P. (2d) 686 (1936).

B. Payment of Treatment Is Admissible for Purposes Other than to Prove Liability (Not to Prove Truth of Matter Asserted)

PeaceHealth cites the Advisory Committee for Federal Rules of Evidence statement that "generally, evidence of payment of medical, hospital, or similar expenses of an injured party by the opposing party, is not admissible, the reason often given being that such payment or offer is usually made from humane impulses and not from an admission of liability." Respondent's Brief, at 16. This again confuses an administrative insurance system with a general negligence context. Certainly PeaceHealth is not arguing that they administer their worker'

compensation claims out of "humane impulses." It is an insurance system, with claim adjudication taking place over many years on many levels. It is not simply a singular liability determination.

PeaceHealth further argues that "[i]f the Court were to hold that an employer accepts responsibility for a condition by simply providing payment for treatment, employers would be far less likely to provide upfront payment for treatment until its responsibility is established via a final and binding Department order." Respondent's Brief, at 19. PeaceHealth then argues that any treatment for Thoracic Outlet Syndrome that was paid for was "provisional in nature" and not binding as to its future obligations. Id.

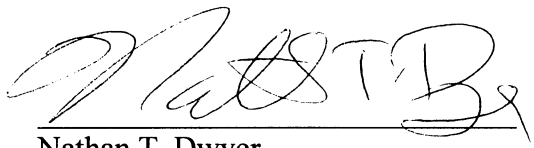
While interesting arguments, they argument do not hold any weight given the timeline of events. The claim was allowed in 2007, treatment was paid for, including surgeries in 2009. To that point, PeaceHealth did not request any formal order regarding thoracic outlet syndrome. Treatment for the complications of surgery were then authorized and paid for until the Department formally allowed the complications in 2013. Then, and only then, for the first time does PeaceHealth begin to question the underlying thoracic outlet diagnosis, and appeals the orders which are the subject of this appeal. How long must an injured worker wait to see if prior treatment will be challenged?

How can further administrative decisions be made when under the Employer's argument they would have an unrestricted period of time to later and challenge the underlying conditions? An interesting question to consider is whether PeaceHealth would have ever challenged the thoracic outlet diagnosis and surgery had there not been the unintended consequences of the surgeries.

C. Conclusion

Ms. Hull requests this Court set aside the order of the Superior Court in this matter and affirm the decision of the Board of Industrial Insurance appeals that affirmed the Department orders allowing the various conditions under her claim.

Respectfully submitted this 18th day of April, 2016.



Nathan T. Dwyer
WSBA # 34006
Attorney for Appellant Hull

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF WHATCOM

In Re: LORIANN HULL, Appellant Vs. PEACEHEALTH Respondent	Cause No.: 15-2-00002-7 Court of Appeals No. 74413-5 CERTIFICATE OF SERVICE

I certify that under penalty of perjury under the laws of the State of Washington that on the below date I caused to be to be served the foregoing **APPELLANT'S REPLY BRIEF TO DIVISION I COURT OF APPEALS** to all parties listed below:

James Gress
Gress & Clark
9020 SW Washington Square Rd
Ste. 560
Portland, OR 97223
(X) Via U.S. Mail

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COURT OF APPEALS DIV I
STATE OF WASHINGTON
2016 APR 19 PM 2:45

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ROBINSON & KOLE, P.S., INC.
ATTORNEYS AT LAW
911 DUPONT, BELLINGHAM, WA 98225
(360) 671-8112 1-800-640-5616
FAX (360) 671-1971

Richard Johnson
Court Administrator/Clerk
Court of Appeals, State of Washington, Division I
One Union Square
600 University Street
Seattle, WA 98104
(X) Via Delivery by 4th Corner Network, Messengering Service

Anastasia Sandstrom
Office of the Attorney General
800 Fifth Ave, Ste. 2000
Seattle, WA 98104
(X) Via U.S. Mail

DATED this 18 day of April, 2016 in Bellingham, Washington.

ROBINSON & KOLE

By _____
Nathan T. Dwyer
WSBA # 34006
Attorney for Claimant

911 Dupont Street
Bellingham, WA 98225
(360) 671-8112

ROBINSON & KOLE, P.S., INC.
ATTORNEYS AT LAW
911 DUPONT, BELLINGHAM, WA 98225
(360) 671-8112 1-800-640-5616
FAX (360) 671-1971