SAULT STE. MARIE CHIPPEWA TRIBAL COURT

DAVID LANDREVILLE,

Appellant,

-v- **WC 16-01**

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS WORKER'S COMPENSATION COMMITTEE,

Appellee.

OPINION & ORDER

INTRODUCTION

The matter comes before the Court on Appellant's appeal of the Committee's/Appellee's decision affirming the Department's decision to close the Appellant's claim on June 8, 2016. Because the Appellant has proven by a preponderance of the evidence that the Committee incorrectly construed the law and found the facts, the Committee's decision is reversed.

FINDINGS OF FACT AND PROCEDURAL HISTORY

The Appellant, Mr. Landreville was hired by the Sault Tribe Housing Authority on May 12, 2015 as a Carpenter, making $19.19 per hour. While working at a job site in Hessel, Michigan, Landreville fell from improperly constructed scaffolding and seriously injured his back. The fall was from a height of approximately 20 feet, with Landreville striking cross-braces of the scaffolding during the fall and landing on a concrete surface. Landreville underwent

lumbar surgery due to the significant injuries sustained during the fall. The surgery was performed by Dr. Rawsum on July 13, 2015. Resp't's Ex. 7. Landreville continued to see Dr. Rawsum through January 2016. Landreville also participated in physical therapy from September 1, 2015 through December 3, 2015. In January 2016, Dr. Rawson cleared Landreville to continue physical therapy and continue a work hardening program, and further recommended a functional capacity evaluation. *Id.*

Comp One, the Tribe's Third Party Administrator for worker's compensation, did not refer Landreville for the functional capacity evaluation, determining them to be "not very accurate" and instead sent Landreville for an independent medical exam on February 4, 2016, with Dr. Hyatt. Dr. Hyatt gave Landreville restrictions including "a lift/carry limit of 20-25 pounds, with avoidance of repetitive bending, twisting, stooping, or overhead work." Resp't's Ex. 7. Dr. Hyatt determined that Landreville was "not at a level of maximal medical improvement" and that continued treatment, consisting of the work hardening program, was appropriate. Landreville began the work hardening program again on March 11, 2016, and participated through April 21, 2016, helping out at the Tribal Elder program in Hessel, Michigan three days per week. Landreville participated in a follow-up comprehensive evaluation with Dr. Hyatt on May 2, 2016. Resp't's Ex. 1. At that appointment, Landreville indicated to Dr. Hyatt "that he continue[d] to experience improvement with regard to his lumbar surgery," although he still experienced "discomfort," "well-localized pain," and "some numbness." Resp't's Ex. 8. Dr. Hyatt deemed that Landreville had experienced a "satisfactory course in recovery" following the surgery and post-surgical care, but that Landreville

> *"...should observe some precautionary restrictions at this stage in medical care. Those restrictions would include avoidance of exposure to heaving lifting (100 pounds or more based upon the Dictionary of Occupational Titles) and avoidance of activities that would expose him to repetitive bending, twisting, and stooping.*

He has recovered sufficiently to resume the vast majority of his regular occupational duties and minor accommodations would be required to enable him to resume work as a carpenter while observing the aforementioned restrictions." Id.

In response to Dr. Hyatt's evaluation report, Comp One terminated his worker's compensation benefits on May 5, 2016. Resp't's Ex. 13. Landreville was offered employment as a Maintenance Worker at the Kewadin Shores Casino, and began in that position, making $10.24/hour on May 16, 2016. The position of Maintenance Worker has less demanding physical requirements than that of Carpenter according to the respective job descriptions. Resp't's Ex. 1 at 4-7. On May 23, 2106, Landreville protested Comp One's decision to terminate his benefits as of May 5, 2016, to the Risk Committee. Resp't's Ex. 1. On June 8, 2016, the Risk Committee issued its decision, affirming Comp One's decision to close Landreville's claim. *Id.* The Risk Committee rationalized that because Landreville had suffered an injury giving rise to a "temporary total disability," which is limited to the period of that disability, and that because Dr. Hyatt had returned Landreville to work as a carpenter with restrictions, the disability had terminated, and therefore his claim should be closed. *Id.*

Landreville filed his *Notice of Appeal* with the Tribal Court on July 21, 2016. The Court subsequently issued a *Summons*, notifying the Appellee, by and through the Worker's Compensation Committee that the appeal was filed. The Appellant proceeded pro se in this matter, and the Appellee was represented by counsel from the Tribe's Legal Department. On August 22, 2016, the Court issued a *Notice of Hearing*, notifying the parties of a forthcoming *Status Conference*, and a separate *Notice of Hearing*, notifying the parties of the date of the *De Novo Hearing*. On September 6, 2016, the Court adjourned the matter due to the Plaintiff's failure to appear. *Order of Adjournment*, Sept. 7, 2016. The parties convened for a pre-trial/status conference on September 16, 2016, at which time the court found good cause to

adjourn the *De Novo Hearing*. *Order of Adjournment*, Sept. 16, 2016. On October 6, 2016, the Court issued a *Scheduling Order*, setting forth filing deadlines and setting the matter for *Trial/De Novo Hearing*.[1] The Appellant filed a *Motion for Protective Order and Request for Adjournement [sic]*, along with a *Notice of Motion Hearing*, on November 2, 2016. Following the *Motion Hearing*, the Court granted the motion in part on the record and directed the Appellee to file a proposed order with the Court for entry, which counsel for the Appellee subsequently failed to do. Accordingly, no order resulting from the *Motion Hearing* exists within the court file. Following the *Motion Hearing*, the Court further adjourned the forthcoming *De Novo Hearing*, finding good cause to do so. *Order of Adjournment*, Nov. 8, 2016. The parties convened for, and the *De Novo Hearing* was held, on November 28, 2016. On the record, at the conclusion of the hearing, the Court reserved its ruling, which this *Order* now serves as. At the conclusion of the hearing, the Court further invited the parties file to trial briefs, however, neither the Appellant nor counsel for the Appellee filed such a brief, therefore the Court relies on the record before it at the conclusion of the hearing in issuing this decision.

DISCUSSION

Appellant's argument is that, rather than close his claim on May 5, 2016 based on Dr. Hyatt's report, the Department, and subsequently the Worker's Compensation Committee/Appellee should have deemed him temporary partially disabled under the Code, given the accommodations Dr. Hyatt indicated must be made for him to his job duties. The Department and Committee, argue that he was returned to work as a Carpenter by Dr. Hyatt, therefore was no longer disabled, and that his claim was thus properly closed at that time. The

[1] Despite the mandate within the Scheduling Order that the parties file a witness and exhibit list with the Court seven days prior to the de novo hearing date, neither the pro se Appellant nor counsel for the Appellee filed a list.

Court agrees with the Appellant that the Department and Committee improperly closed his claim for the reasons stated below.

Standard of Review

Although Chapter 45 of the Tribal Code: Worker's Compensation Code was initially enacted in 1996 (with only two revisions since that time not material to this matter) there is no previous caselaw interpreting any section of Chapter 45, as virtually all previous worker's compensation cases filed in Tribal Court have resolved short of the de novo hearing and resulted in a dismissal. As such, interpretation of the Tribal Court's standard of review with respect to the Worker's Compensation Committee's decisions under Chapter 45 is a matter of first impression before the Court. Therefore, the Court finds it valuable to formally analyze and address this issue at some length.

Tribal Code §45.604 Hearings, provides that the court "shall conduct a de novo hearing on the appeal as provided in this section." *Id.* at (1). In common vernacular, de novo hearings are generally understood to mean hearings at which a court hears evidence and issues a ruling, without giving deference to any decisions made previously. For example, Black's Law Dictionary defines a "hearing de novo" as "1. A reviewing court's decision of a matter anew, giving no deference to a lower court's findings. [internal citations omitted] 2. A new hearing of a matter, conducted as if the original hearing had not taken place." 789 (9th ed. 2009). Section 45.604 of the Tribal Code, however, goes on to provide that "the findings and decisions of the Committee shall be prima facie correct, and the burden of proof shall be upon the appellant." If the Tribal Court determines that the Committee has acted within its power and has correctly construed the law and found the facts, the decision of the Committee shall be affirmed;

otherwise, it shall be reversed or modified." *Id.* at (8). This condition of giving deference to the Committee's decision found in § 45.604(8) is at odds with the common function of de novo hearings, making further analysis of the standard of review necessary.

Although Chapter 45 indicates that the Tribal Court "need not look to interpretations of the worker's compensation laws of the State of Michigan or of any other jurisdiction," the Court finds it incumbent upon the Court to do just so. § 45.103.[2] First, as stated above, this is a matter of first impression before the Court. Therefore there is no existing caselaw out of this Court to serve as either binding or guiding precedence. One of the court's fundamental roles is to interpret the law, and when a statute's meaning is ambiguous or subject to various interpretations, the court has a responsibility to engage in diligent analysis. Second, it would be irresponsible of the court to blindly interpret this, or any law, within a vacuum, without looking to the astute analyses of the same provisions proffered by other respected courts – particularly tribal courts. Tribal Code § 81.105(2); *In re TCD*, APP 13-02 (2014) at 6.

Judge Maldonado of the Little Traverse Bay Bands of Odawa Indians ("LTBB") Tribal Court, pens a well-reasoned analyses of nearly identical provisions of LTBB's statutes in the *Kuebler v. Odawa Casino Resort* decision. C-211-0815 (2016). Within that decision, Judge Maldonado reviews LTBB's Workers' Compensation Statute ("WCS"), Wagankising Odawak Statute 2013-0015, finding that the statute's clear language provides for a customized de novo standard of review, which comports with equitable purposes, as well as public policy. *Kuebler* at 4-5, 7-9. The section that proscribes the Court's role and authority on appeals, LTBB WCS § 25,

[2] This section is ill-advised, unconstitutional at worst, and contrary to public policy at best, and would not pass the "straight-face test" if the Court interprets "the Tribe" as used in this section to refer to the Tribe solely as an employer, as no Court should be bound by law to interpret those laws in favor of one party appearing before it over another. However, the Tribe is more than employer – it is a government, it is a group of people, it is a community. Thus, the Court interprets this section to mean that the Court should construe this Chapter in accordance with the values of the Tribe, and in a matter which strengthens the Tribe and its people, which the Court does within this *Opinion and Order*.

mirrors our Tribal Code § 45.604.[3] Each of the justifications that Judge Maldonado provides and discusses at length in *Kuebler* for her interpretation of the standard of review is equally applicable to our Worker's Compensation Code, including the plain reading of the statute and that each section must be given meaning. As mentioned above, the language used in our Tribal Code is precisely the same in defining the nature of the hearing and the Court's role and authority as it is within LTBB's Code. *Compare* Tribal Code § 45.604, *with* LTBB WCS § 25. Therefore, the interpretation of the statutory language in *Kuebler* does provide guidance to this Court's interpretation of the identical statute.

The interpretation of the statutory language at issue set forth in *Kuebler*, and that this Court adopts herein, is also consistent with the well-established principals of statutory construction that specific provisions of law govern over more general provisions, and that every word and clause must be given effect. Therefore, in cases where a general provision, in this case the provision for a de novo hearing, § 45.604(1) appears to conflict with a more specific one, in this case, the provision requiring deference, § 45.604(8), the specific provision must be given meaning and construed as an exception to the general one. *See, e.g., Morton v Mancari*, 417 US 535, 550-551 (1974). Therefore, as *Kuebler* holds, in appeals to Tribal Court under Chapter 45, Tribal Code clearly dictates that the Court afford some deference to the Committee's decision, contrary to the traditional perception of de novo hearings.

It is the level of that deference that requires further analysis, which this Court again finds *Kuebler* instructive upon. The equitable ends to be served by LTBB's statute as described within *Kuebler* are also present within Chapter 45, albeit to a somewhat lesser degree. The purposes of

[3] One difference in the LTBB statute is that the appeal to Tribal Court is of the Administrator's decision, and there is not a second level of administrator decision making as their in within our Tribal Code with the Risk Committee. Regardless, the analysis of the Court's role and authority remains no less applicable. WCS § 24(A); Tribal Code § 45.603(1).

Chapter 45 set forth in § 45.203 evidence the equitable goals of the Chapter, establishing a no-fault system that bears a reasonable cost to the Tribe while compensating workers for work-related injuries or diseases, seeks to "eliminate the adversary nature" of the proceedings, strives to make the worker whole physically and economically, and encourages harm prevention practices by the Tribe as an employer. *Kuebler* at 9-14. Furthermore, by inclusion of the word "unjust" in addition to "unlawful" in describing the appellant's view of the Committee's decision, just as LTBB's statute, Sault Tribe's Worker's Compensation Code also implies equity – that is, permits the Court not to review not just for legal error, but also error resulting in a decision that is "contrary to what it equitable." *Kuebler* at 13.

And finally, Sault Tribe, not only as an employer, but as a community, has the same public interest in protecting against a potential conflict of interest that the Worker's Compensation Committee may face, that the *Kuebler* opinion describes as to their LTBB's Administrator, who wields the like decision-making authority. *Id.* at 14-15. Our Worker's Compensation Committee is comprised of at least three (3) Tribal team members coming from the Legal Department, Accounting Department, and Human Resources Department, and a member of the Board of Directors, resulting in an inherent conflict of interest that may influence decisions to favor the employer – the Tribe. Tribal Code § 45.208; *Kuebler* at 14-15. The appellant's ability to appeal a protest to the Tribal Court, which is required to conduct a de novo hearing while giving deference to the Committee's decision is an integral check-and-balance in accordance with public policy.

Therefore, this Court adopts the interpretation of the standard of review adopted by Judge Maldonado in the *Kuebler* decision, and shall apply the same in this, and future matters arising under Chapter 45 of the Tribal Code, to wit: the Risk Committee's "findings and decisions will

be considered prima facie correct, placing the burden of proof on the appellant. The appellant's burden to prove its case by a preponderance of the evidence may be satisfied on two fronts – by review of the record, by new findings." *Id.* at 15-16. That is, the Court will review the Risk Committee's records provided upon filing of the appeal pursuant to § 45.603(3) for abuse of discretion. In addition, the court shall hold a de novo hearing to allow new discovery and findings, and shall weigh the final record to determine whether the appellant has met his or her burden of proof to rebut the presumption that the Risk Committee decided correctly.

Analysis

In this matter, then, the Court must determine whether the appellant has proven, by a preponderance of the evidence, that the Worker's Compensation Committee improperly construed the law and found that facts, resulting in an unlawful and unjust closure of the appellant's claim and termination of his benefits. Tribal Code § 45.511 provides that "[a] worker's claim shall be closed when the Department determines that the injured worker has reached the point where no further material improvement would reasonably [sic] expected from medical treatment, or the passage of time."

Within its *Decision on Protest; Notice of Appeal Rights*, the Worker's Compensation Committee found that the Insurance Department's decision to close Landreville's claim was "legally and factually correct." Resp't's. Ex. 1 at 15. The Committee reasoned that Landreville had previously been determined to have a "temporary total disability," but had since "been released to return to work as a carpenter by the physicians, and as such, the disability ha[d] terminated." *Id.* However, the Committee misconstrued both the law and the facts in this instance.

Temporary total disability is defined to mean "a condition resulting from an injury that results in total loss of wages and exists until the injured worker reaches maximum medical healing." § 45.207(24). Accordingly, a temporary total disability would properly cease when the injured worker returns to work at his or her pre-injury wage level, or when the injured worker is medically cleared to return to work at his or her pre-injury wage level because no further material improvement can be reasonably anticipated. *Id.*; § 45.511

In this case, it is clear from Dr. Hyatt's impression that Mr. Landreville had not yet attained maximum medical healing and required further treatment. Dr. Hyatt explained that importance of Landreville continuing his home exercise program and medical care in order to achieve further medical healing.

> "He is *very close to achieving* a level of maximal medical improvement but the recovery following this type of surgery typically extends over a span of 12 months and, *with continuation of exercise, further strengthening in the paralumbar region can be achieved*, correcting the mild paralumbar weakness noted on today's examination. The current condition and the recommendations for restrictions remains related to the effects of the musculoskeletal injuries sustained from the accident that occurred on May 19, 2015." Resp't's Ex. 8 at 4-5 (emphasis added).

It is apparent that Dr. Hyatt expected further material improvement in Landreville's medical condition sustained as a result of his injuries, given further medical treatment and the passage of time.

In addition, Landreville was not medically cleared to resume the duties of a full-time Carpenter, in light of the duties listed in the job description. The restrictions included "avoidance of exposure to heaving lifting (100 pounds or more based upon the Dictionary of Occupational Titles) and avoidance of activities that would expose him to repetitive bending, twisting, and stooping." *Id.* at 4. The job description for a Housing Carpenter includes among the essential functions of the position: "constructs, erects, installs, and repair building

structures," "assembles construction and building materials as required," and "installs building materials on new construction and rehabilitation projects." Resp't's Ex 1 at 4. The specific physical requirements attributable to the Carpenter position include some of the very things Landreville was medically advised to avoid: "[p]osition *very heavy with lifting objects over 100 pounds with team or dual lifting and frequent lifting/carrying of more than 50 pounds*. Physical factors include constant standing, walking; *frequent* carrying/lifting, pushing/pulling, climbing, *stooping*, kneeling, crawling, reaching, manual handling, use of hearing, *bending*; occasional bending." *Id.* Furthermore, Landreville, having worked as a Carpenter, testified that the precautionary restrictions and "minor" accommodations recommended by Dr. Hyatt are simply not possible to implement in the normal course of the Carpenter's job duties. No testimony or other evidence to the contrary was provided by the Committee. As such, the Court finds that Landreville was not able to perform the functions of Carpenter to a degree required by the position and environment due to his work-caused injury. Therefore, Dr. Hyatt's impression, although it states that Landreville could "resume the vast majority of his regular occupational duties," did not serve as medical clearance to return to him to his previous position as Carpenter. It is akin to a situation where the exception swallows the rule – in this case, the exception, the physical restrictions, swallowing the rule, the duties of the Carpenter. As such, the Court finds, by a preponderance of the evidence, that the Committee did not properly construe the facts or the law in deciding that Landreville's temporary total disability had terminated, and unlawfully and unjustly closed his claim. The Department and Committee should not have been closed is claim, effective May 5, 2016 and affirmed June 8, 2016, and his medical and wage benefits should have continued.

CONCLUSION

THEREFORE, IT IS ORDERED that the Court reverses the decision of the Worker's Compensation Committee and remands this matter to the Committee in accordance with § 45.604. **IT IS FURTHER ORDERED THAT** the Committee shall direct the Department to re-open the claim, effective May 5, 2016, and compensate the Appellant in accordance therewith.

Any person adversely affected by a decision of the Tribal Court in a civil case may file an appeal within 30 days after entry of the written judgment or order in accordance with Tribal Code Chapter 82: Appeals.

IT IS SO ORDERED this 17th day of January 2017, by the Sault Ste. Marie Chippewa Tribal Court located in Sault Ste. Marie, Michigan within the sovereign lands of the Sault Ste. Marie Tribe of Chippewa Indians.

Hon. Jocelyn K. Fabry (P67806)