

20100156

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

JLY Transport Inc.)
)
 Appellant,)
)
 vs.)
)
 NORTH DAKOTA)
 WORKFORCE SAFETY & INSURANCE)
 FUND,)
)
 Appellee,)
)
 JOHN HOLMGREN,)
)
 Respondent.)
 _____)

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

NOV 17 2010

STATE OF NORTH DAKOTA

APPEAL FROM THE ORDER ON ADMINISTRATIVE APPEAL &
SPECIFICATION OF ERROR DATED APRIL 20, 2010; ORDER FOR
JUDGMENT AND JUDGMENT DATED APRIL 22, 2010, CASS COUNTY
DISTRICT COURT - EAST CENTRAL JUDICIAL DISTRICT
THE HONORABLE WADE L WEBB, PRESIDING
CASS COUNTY CIVIL NO.: 09-09-C-03335
SUPREME COURT CIVIL NO.: 2010 0156

APPELLANT'S PETITION FOR REHEARING

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JLY Transport, Inc., hereby petitions for rehearing of this Court's November 9, 2010, opinion in this matter.

This Court's opinion asserted in Paragraph 12 that,

JLY additionally argues that it was improper to charge the employer's premium account in the absence of a finding of a compensable injury. This issue was not raised either before WSI or in the specification of error in the district court, as required.

As is readily apparent, that assertion is simply incorrect.

WSI's counsel acknowledged at the administrative hearing that,

The reason the employer is here is, obviously, you know, it's paying a premium and its premiums increase --- the size of its premiums depend upon claims. There's a stipulation here. WSI is not going to go back and say Mr. Holmgren has to give up his benefits no matter what happens here, so really Mr. Yantzer is here saying I shouldn't be charged with this because, WSI, you were wrong to enter into this stipulation. That's water under the bridge. That's why I believe that it's up to Mr. Yantzer to show that WSI didn't have a reasonable basis to entering into this and then what that's going to do is result in, if he's correct, WSI will adjust his premium or not charge him for this particular claim

(App. p. 66 (HT p. 6, ll 11-25).

JLY's counsel stated that,

[I]f, in fact -- well, Mr. Yantzer tried and really couldn't prevent WSI from entering into the stipulation. The real issue, Mr. Gigler is right, is whether the payment is chargeable against Mr. Yantzer's account, If it isn't a compensable injury, then it shouldn't be chargeable against this account. If it is, it should. So that's why I think the real issue is whether or not Mr. Holmgren suffered a compensable work injury or not.

(App. p. 67 - ll 7-16).

JLY's counsel further stated that,

WSI's acceptance, either again, by stipulation, paying Mr. Holmgren, paying his medical bills, paying for his lost time is being saddled on Mr. Yantzer [JLY's president].

(App. p. 154 (HT p. 94 - ll 15-18).

JLY specified Finding of Fact 10 and Conclusions of Law 1, 2, and 3 as error in its appeal to the District Court (App. p. 9).

FINDING OF FACT

10. The greater weight of the evidence indicates that WSI had a reasonable basis for entering into a stipulation to resolve a disputed claim with Holmgren. Holmgren presented evidence of an overuse that occurred while Holmgren was employed by J.L.Y. (Ex. 20. p. 46).

CONCLUSIONS OF LAW

1. J.L.Y. argues that the evidence does not support a conclusion that Holmgren had suffered a compensable injury. However, that is not the issue. The issue is whether WSI had a reasonable basis to enter into a stipulation with Holmgren to resolve a disputed claim.
2. The greater weight of the evidence indicates that there is sufficient evidence for WSI to have entered into the stipulation with Holmgren.
3. The Order dated August 14, 2008 affirming the terms of the settlement stipulation is hereby AFFIRMED.

(App. pp. 57-58).

In articulating why that particular finding of fact and those particular conclusions of law were in error, JLY stated,

JLY, Transport Inc., has standing in this matter because its employer premium account is affected by WSI's decision to settle Mr. Holmgren's claim. WSI did not use its own money to pay Mr. Holmgren; it used the employer's.

(App. p. 10).

The District Court noted in its Order on Administrative Appeal & Specifications of Error that,

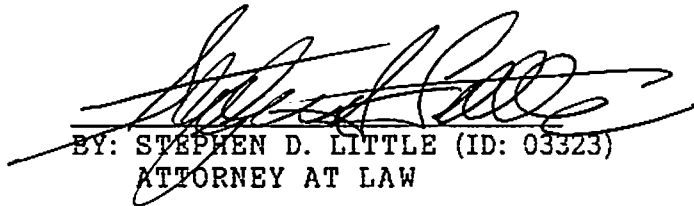
At the hearing, counsel for JLY argued that the issue before the Temporary ALJ was whether or not Holmgren suffered a compensable work injury, which if not, should not be charged against JLY's account. (App. p. 15).

It is readily apparent that JLY raised the issue of WSI's failure to determine that a compensable injury had occurred while, at the same

time, charging to JLY's account with the disability and medical benefits paid to Mr. Holmgren at every stage of the proceedings and that neither WSI's counsel nor the TALJ nor the District Judge were in any doubt about that issue. This Court's opinion in Paragraph 12 is mistaken, and JLY Transport, Inc., deserves a rehearing on that issue.

Respectfully submitted this 17th day of November, 2010.

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CERTIFICATE OF SERVICE

I, Stephen D. Little certify that on the 17th day of November, 2010, a true and correct copy of the Appellant's Petition for Rehearing with an attached Certificate of Service were mailed to the following:

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