


Appellate Courts Case Information

4th Appellate District Division 1

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Disposition

Brotherhood Mutual Insurance Company v. Workers' Compensation Appeals Board/Guideone Mutual Insurance Company et al.

Case Number D077799

Description:	Petition summarily denied by order
Date:	10/06/2020
Disposition Type:	<p>Final</p> <p>The petition for review, answer and reply have been read and considered by Justices Benke, Huffman and O'Rourke. Real Party in Interest Charles Lewis was employed as a maintenance worker by Horizon Christian Fellowship (Horizon) from January 1996 to June 2017. On April 26, 2017, Lewis filed an application for adjudication of a workers' compensation claim for an injury that occurred on May 11, 2015. Lewis also filed an additional claim for cumulative trauma, a lower back injury, that he alleged occurred from April 11, 2016 to April 11, 2017. From March 1, 2015 to June 1, 2017 Horizon was insured by GuideOne Mutual Insurance (GuideOne). From February 28, 2013 to February 28, 2015, Horizon was insured by Brotherhood Mutual Insurance Company (Brotherhood). After the claim was filed, GuideOne and Lewis designated an Agreed Medical Examiner (AME), Jeffrey P. Bernicker, M.D., who found Lewis suffered a cumulative trauma back injury that ended on May 11, 2015 and that Lewis had not sustained a specific injury as alleged in his initial claim. On August 30, 2018 GuideOne filed a Petition for Joinder of Brotherhood as an additional party under Labor Code section 5500.5, subdivision (b) (all further statutory references are to the Labor Code). The petition indicated that because Brotherhood provided coverage for a two-year portion of Lewis's cumulative trauma, Brotherhood</p>

was a necessary and appropriate party defendant for the claim. GuideOne and Lewis entered a Joint Compromise and Release, which stated Lewis had a cumulative trauma, low-back injury that ended on May 11, 2015 and that there was no other industrial injury. On September 17, 2018, the Workers' Compensation Judge (WCJ) approved the Compromise and Release and on September 25, 2018, joined Brotherhood as a party defendant. On January 18, 2019, GuideOne filed a Declaration of Readiness to Proceed, and set a status conference on March 5, 2019. The Declaration stated the issues to be decided were "Joinder Order issued 10/16/2018," and that the complete file had been served on Brotherhood on 11/19/2018. On January 31, 2019, Brotherhood filed an objection to the Declaration of Readiness to Proceed, stating it had not received the complete file and that it had subpoenaed additional records, which are "currently pending and necessary for defendant to review and analyze before a hearing takes place on contribution issues." (Emphasis added.) Brotherhood requested the status conference be taken off calendar pending additional discovery. GuideOne agreed to the delay, and submitted a letter to the WCJ requesting the conference be taken off calendar. From February to August 2019, GuideOne and Brotherhood exchanged e-mails about discovery issues and settlement of GuideOne's contribution claim against Brotherhood. The parties failed to reach an agreement, and on October 21, 2019, GuideOne filed another Declaration of Readiness for a Mandatory Settlement Conference (MSC) on the issue of Contribution/Arbitration and the conference was set for December 18, 2019. On October 30, 2019, Brotherhood objected to the conference on the grounds it was "unaware of the issue for the hearing" and was awaiting the report of a Panel Qualified Medical Evaluator (PQME) it had requested. The objection requested that the "MSC be taken off calendar as discovery is ongoing and incomplete"

An e-mail from GuideOne's counsel to Brotherhood's counsel on December 2, 2019, requested a copy of the PQME's report as soon as it became available and stated that "[p]erhaps we can now settle the contribution claim." Brotherhood's counsel's response was that they were awaiting an examination of Lewis to complete the report and that she was "trying to see how much [her] client can come up with" to settle the claim. The minute order from the December 18, 2019 mandatory settlement conference states that during the conference, Brotherhood "reserved its defense of untimely filing of the Petition for

Contribution" as an issue for the arbitrator. At the conference, the parties agreed to an arbitrator and for "arbitration to be scheduled at a mutually agreeable time and place." The parties lodged arbitration briefs addressing the substantive issue of contribution. In his order after the hearing, the arbitrator states he was first advised that Brotherhood was asserting a statute of limitations defense at the hearing. As a result, the arbitrator requested briefing on the issue and determined he would issue a bifurcated decision on the statute of limitations. Brotherhood argued that GuideOne's claim for contribution was barred because it had not timely submitted a pleading titled "Petition for Contribution" by September 17, 2019, one year after the Compromise and Release was approved by the WCJ. GuideOne argued that its January 18, 2019 Declaration of Readiness was sufficient to initiate contribution proceedings and that the parties had thereafter engaged in negotiations to settle the contribution claim estopping Brotherhood from asserting the statute of limitations defense. On May 20, 2020, the arbitrator issued an order rejecting Brotherhood's arguments. Brotherhood filed a petition for reconsideration to the WCAB, and the arbitrator issued a report and recommendation to deny the petition. On July 16, 2020, the WCAB denied Brotherhood's petition. Brotherhood now seeks to annul the WCAB's finding that GuideOne's claim for contribution is not time-barred. The WCAB is vested with exclusive "judicial power in all disputes arising under the Workers' Compensation Act . . . and in general has inherent power to control its practice and procedure to prevent frustration, abuse, or disregard of its processes." (Crawford v. Workers' Comp. Appeals Bd. (1989) 213 Cal.App.3d 156, 164.) Our review of a decision of the WCAB is limited to whether the WCAB acted without or in excess of its powers and whether the order, decision or award was unreasonable, not supported by substantial evidence or procured by fraud. (Lab. Code § 5952.) Because the WCAB has exclusive jurisdiction over GuideOne's claim, this court's review of the decisions of the WCAB is narrow. (Crawford v. Workers' Comp. Appeals Bd., supra, at p. 165.) In addition, "[a]lthough we review questions of law de novo, 'we will give great deference to the WCAB's interpretation of the law unless it is clearly mistaken.' " (Pearson Ford v. Workers' Comp. Appeals Bd. (2017) 16 Cal.App.5th 889, 895.) The applicable provision of Labor Code, section 5500.5, subdivision (e), states: "At any time within one year after the appeals board has made an award for compensation

benefits in connection with an occupational disease or cumulative injury, any employer held liable under the award may institute proceedings before the appeals board for the purpose of determining an apportionment of liability or right of contribution. The proceeding shall not diminish, restrict, or alter in any way the recovery previously allowed the employee or his or her dependents, but shall be limited to a determination of the respective contribution rights, interest or liabilities of all the employers joined in the proceeding, either initially or supplementally"

(Emphasis added.) Here, the parties agree that the Compromise and Release approved by the WCJ on September 17, 2018 constituted an award for purposes of the statute of limitations contained in section 5500.5, subdivision (e) and that GuideOne was required to initiate contribution proceedings by September 17, 2019. (See *Rex Club v. Workers' Comp. Appeals Bd.* (1997) 53 Cal.App.4th 1465, 1473 [compromise and release "is the equivalent of an award of compensation."].) As it argued in the prior proceedings, Brotherhood asserts that GuideOne never sufficiently initiated proceedings because it was required by the WCAB's regulations to do so by filing a petition for contribution. It points specifically to rule 10510, which states, "After jurisdiction of the Workers' Compensation Appeals Board is invoked pursuant to rule 10450, a request for action by the Workers' Compensation Appeals Board, other than a rule 10500 form pleading, shall be made by petition." (Cal. Code Regs., tit. 8, § 10510.) Rule 10500 includes a Declaration of Readiness. (Cal. Code Regs., tit. 8, § 10500.) While, as the arbitrator noted in his decision a better practice is the filing of an actual petition for contribution that clears any confusion, the WCAB's conclusion that the Declaration of Readiness was sufficient to initiate the contribution proceeding is not a clearly mistaken interpretation of section 5500.5, subdivision (e). As GuideOne points out in its answer, the WCAB has previously concluded a Declaration of Readiness is sufficient under that statutory provision and rule 10510 to initiate proceedings. (See *Old Republic Ins. Co. v. Workers' Comp. Appeals Bd. (Bennett)* (2010) 75 Cal.Comp.Cases 168, 169 (Bennett).) As the WCAB found in *Bennett*, neither section 5500.5, subdivision (e) or rule 10510 specify that a petition is required in this circumstance. Section 5500.5, subdivision (e) does not specify what document must be used to initiate a contribution proceeding and rule 10510 contains an explicit exception for the use of a Declaration of Readiness. Further, as the arbitrator pointed out in his

	<p>report and recommendation to deny Brotherhood's petition for reconsideration, Brotherhood's objection to the Declaration of Readiness stated that it needed to review evidence regarding the contribution issues and the only issue that remained in the proceeding at that time was Brotherhood's contribution. As in Bennett, GuideOne's Declaration of Readiness was sufficient to institute proceedings under section 5500.5, subdivision (e). The other Court of Appeal opinions relied on by Brotherhood do not lead to a different conclusion. (See General Accident Ins. Co. v. Workers' Comp. Appeals Bd. (1996) 47 Cal.App.4th 1141, 1148 [holding "mere joinder of another employer or carrier is not sufficient to satisfy section 5500.5, subdivision (e)."]; and Rex Club v. Workers' Comp. Appeals Bd., supra, 53 Cal.App.4th at pp. 1474-1475 [holding petition for contribution filed after</p>
Publication Status:	supplemental award seven years after initial award does not satisfy one-year statute of limitations as to the initial
Author:	award] The petition is denied.
Participants:	
Case Citation:	none

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