12-31-2014

Hamilton v. Alpha Services, LLC Appellant's Reply Brief Dckt. 42521

IN THE SUPREME COURT OF THE STATE OF IDAHO

TODD LAWRENCE HAMILTON (DECEASED),	)	
	)	**SUPREME COURT NO. 42521**
Claimant,	)	
vs.	)	
ALPHA SERVICES, LLC,	)	
Employer,	)	
DALLAS NATIONAL INSURANCE COMPANY,	)	
Surety, Defendants	)	

APPELLANTS' (EMPLOYER/SURETY) REPLY BRIEF

APPEAL FROM THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ENTERED BY THE IDAHO INDUSTRIAL COMMISSION ON THE 9TH DAY OF JANUARY, 2014.

Chairman Thomas P. Baskin, Presiding

Eric S. Bailey, ISB 4408
Bowen & Bailey, LLP
1311 W. Jefferson St.
PO Box 1007
Boise, Idaho 83701

Attorneys for Appellants

Starr Kelso, ISB 2445
P.O. Box 1312
Coeur d' Alene, Idaho 83816

Attorneys for Respondents

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

Statutes

I.

STATEMENT OF THE CASE

A. Statement of Facts:

For purposes of brevity, Appellants incorporate by reference the Statement of Facts section previously set forth in Appellants' Brief filed with the Court on December 1, 2014 as if set forth herein.

B. Course of Proceedings:

For purposes of brevity, Appellants incorporate by reference the Course of Proceedings section previously set forth in Appellants' Brief filed with the Court on December 1, 2014 as if set forth herein.

II.

ISSUES PRESENTED ON APPEAL

For purposes of brevity, Appellants incorporate by reference the Issues Presented on Appeal section previously set forth in Appellants' Brief filed with the Court on December 1, 2014 as if set forth herein.

III.

ATTORNEY FEES ON APPEAL

Appellants are not currently asking for attorney fees on appeal.

IV.

ARGUMENT

A. Mr. Hamilton's Wife's Testimony That Hamilton Was Returning to Work after Grocery Shopping is Not Supported by Any Actual Evidence.

Respondent asserted that after Hamilton went grocery shopping, he called his wife not long before the accident and told her that he had "to go back to the job site." The Commission relied upon this testimony to conclude that a causal connection existed between accident and Hamilton's work. What both Respondent and the Commission have failed to do was develop any plausible reason for why Hamilton would have to return to the job-site. No actual evidence has been cited to that Hamilton had been summoned back to the jobsite. No actual evidence has been cited to that Hamilton had agreed to exchange the blue service truck for any other service truck with any other employee at any point in time, let alone at some specific time at the storage container. No actual evidence has been cited to that there was any reason for Hamilton to drive a work truck laden with personal groceries to any worksite to fulfill any work related purpose. No actual evidence has been cited to that any employee had any clue what Hamilton would be doing after his shift had ended.

The bottom line, as discussed in Appellants' Brief, was that at the time of the accident, Hamilton had absolutely no reason to return to any worksite to fulfill any work-related purpose whatsoever. Any and all attempts by Respondent and the Commission to come up with "reasons" is nothing more than pure speculative guesswork in an attempt to provide for Mr.

Hamilton's heirs. No actual evidence outside the realm of mere speculation has been proffered at any point in time in this case by either Respondent or the Commission as actual proof of what Hamilton was doing, where he was going, or what purpose he was serving at the time of the accident.

Support for Appellants' position in this regard can actually be found in Respondent's own Responsive Brief. On Page 11 of the Responsive Brief, Respondent listed out several bulleted items that purported to set forth "many of the major considerations" of the Commission in finding in Hamilton's favor. The first bulleted item stated that "Hamilton told his wife he was going to Walden before the accident." However, it has been established that Hamilton went to Walden to run a personal errand to purchase groceries. Therefore, this consideration is not helpful so far as establishing Hamilton was fulfilling a work-related purpose at the time of the accident.

The second bulleted item stated that "He was driving a company truck at the time of the accident." As was already discussed in Appellants' Brief, Hamilton had absolutely no authority to drive the company truck to obtain groceries in Walden, which is where Hamilton was returning from at the time of the accident. As a result, this consideration also does not establish a work-related purpose for Hamilton at the time of the accident.

The third bulleted item was that "There were groceries in the truck at the time of the accident." Again, as has already been discussed, Hamilton went on a personal errand to purchase

personal groceries that were found in the truck after the accident. Again, this does not establish a work-related purpose for Hamilton's activities at the time of the accident.

The fourth bulleted item noted that "He told his wife he was not feeling well and was tired." As has been established throughout the briefing in this matter, Hamilton had already worked all night long and his shift had ended before this conversation occurred. Therefore, he was probably tired because he had worked all night and was still up running personal errands after his shift had ended. Again, this does not establish a work-related purpose for Hamilton's activities.

The fifth bulleted item was that "Just minutes before the accident, he telephoned his wife that he was going to the job site." As discussed above, Hamilton had absolutely no reason to do so and no actual reason has ever been offered by Respondent or the Commission in this matter.

The sixth bulleted item dealt with the statement of the semi-truck driver and his recollection of where Hamilton was heading at the time of the accident. Respondent and the Commission contended that this was evidence of Hamilton's intention to return to the storage container to fulfill a work-related purpose. However, absolutely no actual evidence has ever been provided in this case of any actual reason why Hamilton would have been driving to the storage container. The remainder of Respondent's bullet points try to ferret out this exact issue by offering guesses. The first guess is that Hamilton must have been heading back to work because from the freeway he could see another work truck at the storage container. However, no actual evidence has been offered in this case to offer any reason for why Hamilton would have

any work-related purpose, after his shift had ended, to drive up to the storage container merely because he saw another work truck parked at it. It cannot even be established that Hamilton ever even saw the white work truck or even ever looked into the direction of the white work truck.

The next guess in the bullets is that Hamilton was turning down the road that contained the shipping container for a work-related purpose because there were no other reasons to turn down that road. Again, the underlying premise that Hamilton had no reason to turn down the road in the first place has been ignored. In doing so, Respondent and the Commission have created a "work-related purpose" where none existed based purely upon the directional position of Hamilton's vehicle at the moment of impact in the accident.

The next bulleted guess was that combining the direction of Hamilton's vehicle at the time of the accident with the notion that he was "feeling ill and tired" somehow created a work-related purpose. As stated above, the direction of Hamilton's vehicle and his apparent tired feelings do not create a work-related purpose.

The next bulleted guess essentially states that although nobody has a clue why Hamilton would have tried to go back to work, he must have been returning to work because his "job duties were far broader than simply running a hot saw." The breadth of Hamilton's job duties do not create a work-related purpose. Rather, actual evidence of an actual work-related purpose being fulfilled by Hamilton at the time of the accident could create a work-related purpose. That type of actual evidence does not exist in this case.

The final guess in the bullets is that since Hamilton had no personal purpose for going down the shipping container road, he must have been fulfilling a work-related purpose at the time of the accident. Again, this argument fails to identify any work-related purpose that Hamilton even had to fulfill at the time of the accident. Simply, none was ever identified by Respondent or the Commission as none actually existed.

As a result, none of the bulleted "major considerations" cited to in the Responsive Brief provide any actual evidence that Hamilton was fulfilling a work-related purpose at the time of the accident. In relying upon mere speculation and guesswork, the Commission failed to render a ruling based upon substantial and competent evidence and it's ruling in favor of Hamilton should be overturned.

B. <u>The Commission Did Not Error by Not Awarding Hamilton Attorney Fees</u>.

Clearly, reasonable grounds existed to contest Hamilton's claim for benefits as part of the underlying workers' compensation claim. As the Commission correctly held, this case was "not necessarily self-evident, and Defendants' position was not without merit." R. p. 31. Respondent's argument to the contrary is rather odd. From what Appellants understand, Respondent asserted that when the Commission made the statement noted above, it was only referring to its own perspective as opposed to that of the Appellants. In other words, attorney fees should be awarded because the Appellants knew all the facts of the case before hearing, whereas the Commission did not, so Appellants should have somehow known it was "self-evident" that their position was "without merit." Because of that, the Commission's statement

that this case was "not necessarily self-evident, and Appellants' position was not without merit" only applied to the Commission's perspective as opposed to that of the Appellants. Of course, this argument completely ignores the fact that any and all exhibits intended to be relied upon by the parties were submitted to the Industrial Commission Referee prior to hearing and that all of the same exhibits, plus the additional post-hearing depositions and the hearing transcript itself would then be submitted to the Commissioners. After reviewing this information, the Commission determined that "Defendants' position was not without merit" in denying Hamilton's attorney fees.

Respondent then took the argument a step further by stating that the Commission got the attorney fee issue wrong because Appellants "failed to come forward with any evidence to rebut the positional risk doctrine presumption." (Emphasis added) This is just purely incorrect. Appellants did provide actual evidence to rebut the presumption. The Commission just did not rule in Appellants' favor despite that evidence. Clearly, the Commission would not have found that "Defendants' position was not without merit" if Appellant had not provided any evidence in support of its position in the first place. In fact, Appellants set forth a myriad of reasons for why Hamilton should be denied compensation. These reasons were set forth and discussed at length at hearing, during post-hearing briefing, and during appellate briefing.

For these reasons, the Commission's finding that Hamilton was not entitled to attorney fees related to the underlying workers' compensation claim should be upheld.

C. Hamilton Should Not Be Awarded Attorney Fees On Appeal.

Respondent's argument for attorney fees related to the current appeal before the Idaho Supreme Court is loaded with unsubstantiated attorney argument. The Appellants did not "force" Hamilton's heirs to retain an attorney or go through the hearing process. As this Court is very well aware, parties enter into litigation knowing full well that they could win or lose. Given the facts of this case, which have been discussed at length in Appellants' briefing, there are ample reasons for the Appellants' to have denied the underlying claim and to appeal the Commission's ruling. In this regard, as has been argued throughout by Appellants, the Commission's ruling was not based upon substantial and competent evidence. Rather, it was based upon speculation and assumptions.

Furthermore, Appellants' appeal was timely. Just because an appeal is filed toward the end of the allowable filing period does not equate the filing to a "delaying tactic[s]" as espoused by Respondent. Such an inference is unwarranted and Appellants should not be punished in any way for filing a timely appeal.

The remainder of Respondent's arguments for fees related to this appeal are pure speculative attorney argument. However, since the civil lawsuit was mentioned by Respondent, Appellants will speak to it. It is Appellants' understanding that Hamilton's heirs filed a civil lawsuit against the company who owned the truck that hit Mr. Hamilton's work vehicle. This lawsuit was filed in Wyoming under case number 13-CV-224F. It is Appellants' understanding that the case was settled not long before trial as part of a formal mediation for a confidential sum.

As recognized by Respondent, Dallas National Insurance went bankrupt and its surety obligations are now being handled by the Western Guaranty Fund. More accurately, The Western Guaranty Fund is the claims processor for the Idaho Insurance Guaranty Association. As a result, the Western Guaranty Fund is subject to the statutory framework governing the Idaho Insurance Guaranty Association, which is found at Title 41, Chapter 36 of the Idaho Code. Pursuant to Idaho Code §41-3612(1), which is entitled "Exhaustion of Other Coverage", Appellants are entitled to a subrogation interest in the mediated settlement that occurred as part of the above-mentioned civil lawsuit:

> (1) Any person having a claim against an insurer, whether or not the insurer is a member insurer, under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this act shall be reduced by the amount of any recovery under such insurance policy. (Emphasis added).

Respondent's argument that this appeal was merely a delay tactic to take advantage of this statutory subrogation right is nonsensical. Regardless of whether the appeal was filed or not, Appellants' rights under this statute would have persisted. Furthermore, both Appellant's and Respondent agreed to an expedited appeal. If Appellants' endeavored to engage in some sort of "delay tactic" to buy time for the civil mediation to occur, then Appellants' certainly would not have agreed to an expedited appeal. The bottom line is that Appellants' were not parties to the civil lawsuit and had absolutely no control over the mediation or trial settings.

For these reasons, Respondents request for attorney fees related to this appeal should be denied.

V.

CONCLUSION

The Commission's decision is contrary to the facts and contrary to the law. As a result, Appellants request that this court reverse the Commission's decision.

DATED this 31st day of December 2014.

BOWEN & BAILEY, LLP

NATHAN T. GAMEL - of the Firm
Attorneys for Appellants/Defendants

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 31st day of December, 2014, I caused two true and correct copies of the within and foregoing instrument to be served:

Starr Kelso Attorney at Law PO Box 1312 Coeur d'Alene, Idaho 83816 Fax 208-664-6261	__x__ US Mail _____ Hand Delivery _____ Express Mail _____ Facsimile

Nathan T. Gamel