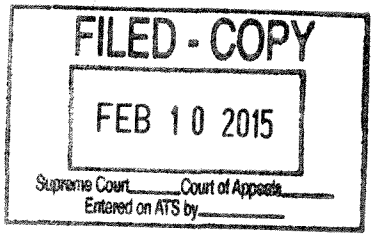
2-10-2015

Chavez v. Stokes Respondent's Brief Dckt. 42589

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

SOHAR CHAVEZ, Claimant/Respondent, v. KEVIN STOKES, Defendant/Appellant.	)	Docket No. 42589-2014 I.C. No. 2012-025814

RESPONDENT'S BRIEF



APPEAL FROM THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

Chairman Thomas Baskin, Presiding

R. Daniel Bowen, Esquire
Bowen & Bailey, LLP
PO Box 1007
Boise, Idaho 83701-1007
Telephone: (208) 344-7200

Attorneys for Appellant

Richard S. Owen, Esquire
Owen and Farney, PLLC
PO Box 278
Nampa, Idaho 83653
Telephone: (208) 466-8700

Attorneys for Respondent

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I. STATEMENT OF THE CASE

A. Nature of the Case

This Appeal arises out of Defendant, Kevin Stokes, contention that a bill incurred immediately after the injury to the Respondent for transport from the site of the accident near Payette, Idaho to Saint Alphonsus Regional Medical Center in Boise was unreasonable and he should not be obligated to pay this bill.

Relying upon the precedent of *Sprague v. Caldwell Transportation, Inc.*, 116 Idaho 720, 722, 779 P.2d 395 (1989) the Industrial Commission found that the Life Flight transport and billing therefore was reasonable. It is from that Order that Mr. Stokes now appeals.

B. Course of Proceedings

Respondents generally agree with the Appellant's recitation of the Court of Proceedings below.

C. Concise Statement of Facts

Respondents agree and adopt the Industrial Commission's Findings of Fact set forth in paragraphs 1-10 of the Order. (R., pp 44-45).

II. ADDITIONAL ISSUES PRESENTED ON APPEAL

Pursuant to Idaho Appellate Rule 35(b)(4), Respondent alleges that additional issues are presented in this appeal which should be addressed as follows:

1. Are the factual findings of the Industrial Commission supported by substantial and competent evidence.

2. Does substantial and competent evidence exist to support the Industrial Commission conclusion that the transport charges in question were "reasonable".

3. Once the factual underpinnings for the decision of the Industrial Commission are examined, it becomes clear that the ultimate decision, i.e. that the treatment was "reasonable", is supported in the record and should be affirmed

4. Is Respondent entitled to attorneys fees pursuant to Idaho Code §72-804.

III. ARGUMENT

A. Standards of Review on Appeal

The terms of Idaho Workers' Compensation statutes are liberally construed in favor of the Employee. However, conflicting facts need not be construed liberally in favor of the worker. *Warren v. William and Parsons, PC CPA,* 337 P.3d 1257 (Idaho 2014); *Mazzone v. Texas Roadhouse, Inc.,* 154 Idaho 750, 755, 302 P.3d 718, 723 (2013).

In reviewing decisions by the Commission, this Court exercises free review over the Commission's conclusions of law, but will not disturb the Commission's factual findings if they are supported by substantial and competent evidence. *Knowlton v. Wood River Medical Center,* 151 Idaho 135, 140, 254 P.3d 36, 41 (2011).

Substantial and competent evidence is relevant evidence that a reasonable mind might accept to support a conclusion. *McNulty v. Sinclair Oil Corp,* 152 Idaho 582, 584-85, 272 P.3d 554, 556-57 (2012) (quoting *Uhl v. Ballard Medical Products, Inc.,* 138 Idaho 653, 657, 67 P.3d 1265, 1269 (2003).

Substantial evidence is more than a scintilla of proof, but less than a preponderance. *Zapata v. JR Simplot Co.,* 132 Idaho 513, 515, 975 P.2d 1178, 1180 (1999). The Court will not re-weigh the evidence, and the Commission's conclusions regarding the credibility and weight of evidence will not be disturbed unless they are clearly erroneous. *Knowlton*, 151 Idaho 140, 254 P.3d 141. All

facts and inferences are viewed in the light most favorable to the party who prevailed before the Commission. *Zapata*, 132 Idaho 515, 975 P.2d 1180.

The Court exercises free review over questions of law that are presented. *Ogden v. Thompson,* 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). Application of legislative acts present pure questions of law over which the Court exercises free review. *Idaho State Ins. Fund v. Van Tine,* 132 Idaho 902, 905-06, 980 P.2d 566, 569-70 (1999).

B. Analysis

1. The Findings of Fact of the Industrial Commission are Supported by Substantial Competent Evidence and Should Not be Disturbed

The Industrial Commission in this matter has made numerous findings of fact which Respondent contends the Court herein should not second guess because they are supported by substantial and competent evidence.

The Industrial Commission found the basic set of facts that the Employer, Kevin Stokes, owns a farm at Fruitland and employed Respondent as an irrigater at the time of this accident and, unfortunately, was uninsured for purposes of workmens' compensation coverage. (R., pp 44-45).

The Industrial Commission further found that on September 8, 2012 the Employer received a call from Payette County dispatch informing him that Respondent had been injured and had driven himself to the home of an off-duty Payette County Police Officer who called 911, summoning Paramedics and EMTs. (R., p 44).

The EMTs who came to the scene at the Payette County Sheriff's home observed Respondent writhing and moaning and appeared to be in considerable pain. Respondent had vomited and after

the examination conducted by the EMTs at the scene, it appeared that it was possible that the partial amputation of Respondent's left small finger might be repaired. (R., p 44).

Based upon this observation, the EMTs called and requested Life Flight to launch and transport the Respondent to Saint Alphonsus Hospital in Boise, Idaho. (See R., p 45).

The evidentiary basis for this finding comes in the Paramedic records contained in this matter as follows:

> S - Requested to respond to 4515 Speas Road for a male patient with a partial amputation of his left pinkie finger. Patient is a 40 year old male: weighing approx. 72 kg. Patient is Spanish speaking only and is unable to state how the injury occurred nor offer and (sic) subjective information. Bystander an off-duty Payette County Police Officer reports the patient came driving up to his residence in a vehicle and showed him his injury. Off Duty Payette County Paramedics EMT reports that at (sic) the patient has vomited once since his arrival with the patient. Bystander then called 911. Patient is unable to deny any pertinent negatives or positives. ...
>
> O - Arrived on location, found patient seated upright on a bench. Noted an off duty EMT elevating left hand. Primary: Patient presented conscious and alert, patient is not able to answer questions due to language barrier. Patient is writhing and moaning and appears in considerable pain. ... upper extremities - right is unremarkable, left pinkie finger at the first knuckle is severely lacerated and appears fractured, no active bleeding present. Note strong regular bounding radial pulses.
>
> A - traumatic injury to left pinkie finger.
>
> P - off duty payette county paramedics EMT land-lines Medic 20 and advises finger may be able to be surgically fixed. Life Flight Network is requested to launch. ... left pinkie finger was bandages and secured to ring finger with 4 X 4's and coban. Life Flight crew arrives. Patient care transferred to crew with a full verbal report. Medic 20 cleared.

(See Defs. Ex. 2, p 1, Report of CJ Trotsky, Paramedic).

After transport to Saint Alphonsus Hospital in Boise, Idaho, and examination by the Emergency Room physician, Dr. Eric Thomas Elliott, Dr. Elliot noted that the Respondent had been transported by Life Flight with a 5th left fifth partial amputation and had been given medications

during the trip which eased his ongoing pain complaints. Dr. Elliott immediately ordered x-rays and found that the Respondent's left small finger had an open fracture of the mid-portion of his left 5th finger with dislocation of the PIP joint. Reviewing the radiology report, Dr. Elliott noted that an x-ray of the left hand reviewed by himself noted that there was a dislocated PIP joint with a transverse commuted fracture of the mid-phalanx of the little finger with wide soft tissue injury at the site. (See Defs. Ex. 4, p 14).

Unlike the "strong regular bounding radial pulses" which were found in the Respondent's little finger by the Paramedics at the scene of the accident, by the time the Respondent got to the hospital, he had no capillary refill present and no sensation to sharp object stimuli at the end of the little finger. (See Defs. Ex. 4, p 14).

Based upon this presentation at the Emergency Room, Dr. Elliott found that the Respondent's small finger was likely non-viable. Despite this finding he still decided to consult with a hand surgeon and transfer care to the hand surgeon in the Emergency Room. (See Defs. Ex. 4, p 14).

After Dr. Clausen, the orthopedic specialist, reviewed the case, he agreed that the end of the Respondent's left small finger could not be re-attached and a revision amputation was performed on the left small finger at the distal portion of the proximal phalanx. (See R. p 45).

Life Flight sent Respondent a statement on September 12, 2012 with a due balance of $21,201.00 for the transport at issue. Employer refuses to pay this bill for the Life Flight transport, leaving Respondent liable therefore.

Respondent contends that all of these factual findings are supported by substantial competent evident in the record and should not be disturbed.

2. **Does Substantial and Competent Evidence Exist to Support the Industrial Commission's Conclusion That the Transport Charges in Question Were Reasonable**

The Industrial Commission started its analysis of the question presented below by citing to Idaho Code §72-432(1) which provides, in pertinent part, as follows:

> "The Employer shall provide .... reasonable medical ... treatment ... as may be required by the Employee's physician ..."

The Industrial Commission continued in its analysis by noting that under Idaho Code §72-432(1) medical treatment is reasonable if the Employee's physician requires the treatment and noted that it was for the physician to decide whether or not the treatment was required. (See *Mulder v. Liberty Northwest Insurance Co.,* 135 Idaho 52, 58, 14 P.3d 372, 402, 408 (2000).

The Industrial Commission noted that pursuant to *Sprague v. Caldwell Transportation, Inc.,* 116 Idaho 720, 722, 779 P.2d 395, 397 (1989), the only review that the Commission was entitled to make regarding the physician's decision was whether or not the treatment was reasonable.

The first finding made by the Industrial Commission in this analytical framework addressed whether or not the EMTs and Paramedics at the scene and who ordered the Life Flight transport were "physicians" as defined by Idaho Code. Starting with Idaho Code §72-102(25), the Commission noted that a physician in Idaho includes members of any other healing profession licensed or authorized by the statutes of the State to practice their profession within the scope of their practice as defined by the statutes of the State.

The Industrial Commission cited to Idaho Code Title 56 regarding an Emergency Medical Technician and noted that Emergency Medical Technicians licensed under Idaho Code Title 56 are

authorized to carry out the practice of emergency medical care within the scope of practice by the Idaho Emergency Medical Services Commission.

Further, the Industrial Commission found that a Paramedic was also licensed pursuant to the provisions of Idaho Code Title 56 and were authorized to carry out the practice of emergency care within their scope of practice determined by the Idaho Emergency Medical Services Commission.

The Industrial Commission found that the medical care was therefore ordered by a physician as defined by Idaho Code §72-432(1). Respondent contends that substantial and competent evidence exists to support this conclusion that it should be affirmed.

Continuing, the Industrial Commission made findings of fact pursuant to the *Sprague* decision, supra, in order to determine whether or not the transport charges at issue were "reasonable".

Despite the protestations of the Appellant, it appears very clear that a decision with regard to whether or not medical care is reasonable should be analyzed pursuant to the *Sprague* decision and its progeny. Indeed, when addressing this issue, reference to the Idaho Industrial Commission decisions demonstrate that this question has been analyzed pursuant to *Sprague*, supra, repeatedly over the years since the decision was issued in 1989. The Industrial Commission has been making findings pursuant to *Sprague* consistently since that time. There is no doubt that the Industrial Commission used the correct analytical framework to address this question. See *Mulder v. Liberty Northwest Insurance Co.,* supra, 135 Idaho 58, 14 P.3d, 402 (2000).

In this regard, the Industrial Commission made the following factual findings:

(a) Did the Respondent make a gradual improvement from the treatment received? The Industrial Commission found that the Respondent did improve after he was transported to Saint

Alphonsus Medical Center and noted that the Defendants did not really dispute the improvement in the Respondent's condition. While it is difficult to analyze this particular case in terms of whether or not the treatment (helicopter ride) resulted in a gradual improvement in the Respondent's condition, the Industrial Commission noted the Respondent had no complications following his treatment at the hospital in Boise and that he had a well-healed and contoured amputation after everything was said and done.

Respondent contends that this finding is supported by substantial and competent evidence and the Court herein should not disturb this finding.

(b) Secondly, it is clear that the Industrial Commission made a finding of fact that the treatment (helicopter ride) was required by the Respondent's physician. The Industrial Commission found that the EMTs and Paramedics on scene qualified, because of their State licenses, as physicians under Idaho Code §72-432 and that they made their decision based upon their observations at the scene and their examination of the Respondent at the scene. It should be remembered that the EMTs and Paramedics on the scene did not have an x-ray machine and had only limited ability to medically assess the Respondent's injury. They found enough reason to be hopeful that the Respondent's finger could be re-attached to order Life Flight transportation for him directly to the closest regional trauma center, Saint Alphonsus Regional Medical Center in Boise, Idaho.

The Industrial Commission specifically found that their analysis did not depend on the success of the medical care envisioned. That is, the compensability and determination of the reasonableness of the medical care did not depend upon whether or not the EMTs or Paramedics at

the scene were correct in their hope that the Respondent's little finger could be re-attached. See *Page v. McCain Foods, Inc.*, 2009 IIC 0427.7 (Sept 2009) and *Campagni v. The Disney Store,* 2013 IIC 0029.27 (April 2013).

The Industrial Commission specifically noted that medical care will not be found reasonable only when it is successful and found that an evaluation of the injured worker's entitlement to medical care should not be made on the basis of a retrospective analysis centering upon whether or not the treatment was completely successful or not.

Respondent herein would encourage the Court to follow the same rules of analysis. Certainly, the Industrial Commission disfavored any request to be a "armchair quarterback" and "second guess" the medical providers at the scene at the time of this accident. This kind of oversight and micro-management is not the kind of review this Court has encouraged the Industrial Commission to conduct in its oversight of the rights of injured workers.

As has been quoted many times, the Workers' Compensation Law is to be construed liberally in favor of the Employee whenever possible. See *Jones v. Morrison-Knudson Co.,* 98 Idaho 458, 567 P.3rd (1977); *Birch v. Potlatch Forest, Inc.,* 82 Idaho 323, 353 P.2d 1076 (1960). Liberal construction in favor of the worker is required to enable the act to serve the humane purposes for which it was promulgated, leaving no room for a narrow and technical construction. See *Hattenburg v. Blanks,* 98 Idaho 485, 567 P.2d 829 (1977).

(c) Finally, the Industrial Commission found that the treatment received was within the physicians standard and that the charges were fair and reasonable and similar to other charges in the same profession. The Industrial Commission made note that there was no evidence that the

cost of the flight was unfair or unreasonable and found that the transport was a reasonable part of the treatment Respondent received for his industrial injury.

It is noted that Appellant's take some issue with the decision of the EMTs to order the Life Flight in the first place and imply that the EMTs on scene were either incompetent or unqualified to make the decision.

However, it is obvious from a review of prior decisions that in many cases, Life Flight is dispatched to the scene of an accident by EMTs, Paramedics or nurses.

In *Ferrin v. Bechtel,* 2011 IIC 0003 (2011), a security guard slipped on some ice and hit his head. He was evidently attended by a nurse at the employer's facility who ordered Life Flight transportation after seeing that Claimant had struck his head, suffered a laceration, was only partially conscious. The employer in that matter did not raise any question that the transport was unreasonable.

In *Kurt 2003, Decedent v. Employer,* 2003 IIC 0465 (2003) it appeared in a heart attack case that EMTs arrived at the scene of an injury and ordered Life Flight transport. This was not questioned by the Defendants.

In *Carl 2003 v. Employer,* 2003 IIC 0838 (2003) it appeared that the Claimant was repairing a tire with an impact wrench when the tire and wheel blew off the hub and pinned the Claimant underneath the vehicle. EMTs arrived and ordered Life Flight to take Claimant to the nearest large regional hospital. Again, the charges of this transport were not questioned.

In *Jones v. Star Falls Transportation, LLC,* 2007 IIC 0222 (2007) the Claimant was in a serious trucking accident and was taken by Life Flight to a local hospital on the orders of the EMTs

who attended the scene of the accident. This process, again, was initiated by EMTs and was not questioned by Defendants.

The point here is that many times EMTs, or Paramedics, as the first responders, are charged with the responsibility to make decisions about whether or not medical care is immediately necessary and whether or not it is appropriate for Life Flight to become involved. It is not unusual for EMTs to make this decision in the slightest and is, therefore, in the terms of *Sprague*, within the physicians standard practice.

Respondent, therefore, contends that all of the factual underpinnings to the Industrial Commission's decision about "reasonableness" are supported by substantial and competent evidence and should not be questioned on appeal.

It should be noted that the Appellant's only argument in this matter is that the factual underpinnings of the Industrial Commission's decision are completely unsupported and that there are no facts which support the Industrial Commission's decision.

Respondent contends that the record demonstrates quite to the contrary and that the facts do support the Industrial Commission's decision without equivocation.

3. Once the Factual Underpinnings for the Decision of the Industrial Commission are Examined, it Becomes Clear That the Ultimate Decision, i.e. That the Treatment was "Reasonable", is Supported in the Record and Should be Affirmed

In the *Sprague* case, the contention was that a chiropractic physician's medical care of the Claimant was not "reasonable" because an orthopedic physician said that the Claimant had reached maximum medical improvement and did not need further care. Despite this, the Claimant continued to treat with his long-time physician, a chiropractic physician in Caldwell.

In its findings, the Commission noted that the Claimant had made gradual improvement over time under the care of the chiropractor, that the chiropractor was a treating physician pursuant to Idaho Code §72-432 and that the treatment was within the standard of practice of the chiropractic and that his charges were fair and reasonable.

Despite these factual findings, the Industrial Commission found that the chiropractic care was unreasonable. This is the holding that the Supreme Court reversed. The Supreme Court did so based upon the fact that the underlying factual findings were well-supported in the record by substantial and competent evidence.

In this matter, the Respondent contends that the underlying factual findings of the Industrial Commission are, just like in *Sprague*, supra, supported by substantial and competent evidence. Respondent contends that based upon these factual findings, this Court should find that the medical care at issue (the Life Flight transportation) reasonable, that the Industrial Commission should be affirmed.

Notably, the Court in *Sprague* noted that once the treating physician requires treatment, the only review the Industrial Commission can make has to do with whether or not the treatment was reasonable and cannot make any review with whether or not the care is required.

4. Attorneys Fees Pursuant to Idaho Code §72-804

Respondent in this case contends that the real issue presented to the Industrial Commission and to this Court is not whether the medical care at issue was really "reasonable" but whether or not it should have been required by the treating physician in the first place. Even though Defendant's couch their argument in terms of reasonableness, it appears very clear that their real argument in this matter is that this case should not have been ordered in the first place and was not necessary.

As noted by the Court in *Sprague*, supra, and *Mulder*, supra, neither the Commission nor this Court can review an EMT or Paramedics decision to require care in this case. Once the finding is made that the care was ordered by a treating physician, its necessity is not something which can be examined. When Appellant's argument is boiled down to its bare essentials, this is basically what they are saying. That the care was not necessary in the first place and should never have been ordered.

Because the Appellants are requesting a review which is improper under case law and statutory frameworks which govern this case, Respondent contents that he is entitled to attorneys fees.

Secondly, if the Court interprets this Appeal as centering upon whether or not the care was "reasonable", it appears very clear that this essentially asks this Court to review the factual underpinnings of the Industrial Commission decision and to re-weigh and re-assess the evidence presented in the Industrial Commission case. Clearly, when attorneys fees are properly awarded when an appeal does nothing more than ask the Court to review and re-weight the evidence submitted to the Industrial Commission pursuant to Idaho Code §72-804. (See *Duncan v. Navajo Trucking, Inc.*, 134 Idaho 202, 998 P.2d 1115 (2000); *Spivy v. Novartis Seed,* 137 Idaho 31, 43 P.3d 789 (2002).

IV. CONCLUSION

When reviewing the facts in this case and giving the Respondent the benefit of all inferences which flow from the evidence introduced in the Industrial Commission proceeding below, it becomes that the factual findings of the Industrial Commission are all well-founded and are based on substantial and competent evidence.

The Appellant in this matter asks this Court to re-weigh that evidence and make a finding that the evidence does not exist, that the conclusion of the Industrial Commission should therefore not stand.

Not only does Respondent disagree vehemently with this allegation, Respondent feels that attorneys fees are warranted because of the undisguised request of Appellant's, requesting that this Court review the evidence in order to make its own decision.

Respondent contends that the Commission's decision is well-supported, should be affirmed and Appellant's herein should be required to pay Respondent's attorneys fees for participating in this Appeal.

DATED This 9 day of February, 2015.

By: _____
Richard S. Owen

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 9 day of February, 2015, I mailed a true and correct copy of the foregoing instrument to the following:

R. Daniel Bowen
Bowen & Bailey, LLP
PO Box 1007
Boise, Idaho 83701

by causing the same to be deposited in the United States Mail, postage prepaid, enclosed in an envelope addressed as above set forth.

_____
Richard S. Owen