[J-4-2004]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

VITAC CORPORATION	:	No. 38 WAP 2003
	:	
v.	:	Appeal from the Order of the
	:	Commonwealth Court entered February 4,
WORKERS' COMPENSATION APPEAL	:	2003 at No. 1342CD2002, affirming in part
BOARD (ROZANC)	:	and reversing in part the Order of the
	:	Workers' Compensation Appeal Board
	:	entered April 30, 2002 at No. A00-2806.
	:	
APPEAL OF: SHEILA ROZANC	:	
	:	ARGUED: March 1, 2004

OPINION

MR. JUSTICE SAYLOR **DECIDED: JULY 22, 2004**

This appeal was allowed to determine whether paraprofessional fees may be recovered as a component of an award of attorney's fees under Pennsylvania's Workers' Compensation Act.

Appellant Sheila Rozanc ("Claimant") was employed as a stenocaptioner by Appellee Vitac Corporation ("Employer"). In June of 1998, Claimant sustained a work-related injury and received workers' compensation benefits pursuant to a notice of compensation payable, which described her injury as carpal tunnel syndrome of the right wrist. On September 30, 1998, Employer filed a petition to suspend Claimant's benefits, on the basis that she refused reasonable medical treatment, namely, carpal tunnel release surgery. Employer subsequently amended its suspension petition to request, in the alternative, modification of Claimant's workers' compensation benefits, alleging that Claimant had been offered a modified-duty position. In the interim,

however, Claimant requested attorney's fees pursuant to Section 440(a) of the Worker's Compensation Act,[1] 77 P.S. §996(a), asserting that Employer's contest was unreasonable. That provision states:

> In any contested case where the insurer has contested liability in whole or in part, including contested cases involving petitions to terminate, reinstate, increase, reduce or otherwise modify compensation awards . . . , the employe . . . in whose favor the matter at issue has been finally determined in whole or in part shall be awarded, in addition to the award for compensation, a reasonable sum for costs incurred for attorney's fee, witnesses, necessary medical examination, and the value of unreimbursed lost time to attend the proceedings: Provided, That cost for attorney fees may be excluded when a reasonable basis for the contest has been established by the employer or the insurer.

77 P.S. §996(a).

By order dated August 26, 1999, the workers' compensation judge ("WCJ") granted the modification petition in part, denied the suspension petition, and awarded Claimant attorney's fees based upon a finding that Employer's contest was unreasonable. With respect to the modification petition, the WCJ found that, as of January 27, 1999, Claimant was entitled to only partial disability benefits due to the availability of a modified-duty position at reduced earnings.[2] Concerning the suspension petition -- which was based solely upon Claimant's alleged refusal of reasonable medical treatment -- the WCJ found that Claimant had been willing to undergo carpal tunnel release surgery, but that Employer and its insurer had effectively

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[1] Act of June 2, 1915, P.L. 736 (as amended, 77 P.S. §§1-1041.4) (the "Act").

[2] The WCJ additionally determined that Claimant was not entitled to any compensation benefits as of April 6, 1999, when she began working for another employer at a higher salary than she earned before her injury.

precluded such treatment by refusing to pay for the procedure. Thus, the WCJ determined that Employer had acted in bad faith in pursuing suspension of benefits and, accordingly, ordered Employer to pay, inter alia, the entire amount of Claimant's attorney's fees, which totaled $4,200.00. The WCJ denied Claimant's request for reimbursement of paralegal and law clerk fees, however, as Section 440(a) does not specifically provide for the award of such fees.

The Workers' Compensation Appeal Board ("WCAB") affirmed the denial of the suspension petition and the grant in part of the modification petition, but reversed the WCJ's determination that the entire contest was unreasonable, noting that Employer ultimately prevailed in its effort to modify benefits. Thus, the WCAB remanded the matter to the WCJ with instructions to award to Claimant only that portion of the attorney's fees attributable to the defense of the suspension petition. Additionally -- and critically for this appeal -- the WCAB directed that, pursuant to Section 440(a), Claimant should recover any paralegal and law clerk fees associated with the awardable portion of attorney's fees, observing that "it is to the advantage of all employers in the Commonwealth to reduce attorney's fees by the usage of paralegals or law clerks, whose hourly rate[s] are much lower than that of an attorney." Thus, on remand the WCJ awarded attorney's fees in the amount of $1,134.00, a sum which included $92.00 in law clerk and paralegal fees.[3]

On appeal, a panel of the Commonwealth Court affirmed the WCJ's order in all respects, except as to the inclusion of paraprofessional fees within the award of the attorney's fee. The court noted that the text of Section 440(a) plainly authorizes the shifting of attorney's fees and other specific costs, but is silent regarding paralegal and

[3] The WCJ's apportionment of fees between litigation of the suspension petition and the modification petition is not at issue here.

law clerk fees. Therefore, applying the principle expressio unius est exclusio alterius, the Commonwealth Court held that the WCAB's award of paralegal and law clerk fees was improper and, accordingly, reduced the fee award to $1,042.00. See Vitac Corp. v. WCAB (Rozanc), 817 A.2d 1205, 1212-13 (Pa. Cmwlth. 2003).

As noted, we granted Claimant's petition for allowance of appeal to address the availability of paraprofessional fees under Section 440(a), an issue of first impression in the Commonwealth.

In support of her position that the Commonwealth Court erred in excluding paralegal and law clerk fees from the term "attorney's fee" as used in Section 440(a), Claimant relies primarily upon Missouri v. Jenkins, 491 U.S. 274, 109 S. Ct. 2463 (1989), in which the United States Supreme Court interpreted a similar fee-shifting provision of the federal Civil Rights Attorney's Fees Awards Act, 42 U.S.C. §1988, to subsume fees charged for the work of paralegals, law clerks, and recent law graduates. The Supreme Court explained:

> Clearly, a "reasonable attorney's fee" cannot have been meant to compensate only work performed by members of the bar. Rather, the term must refer to a reasonable fee for the work product of an attorney. Thus, the fee must take into account the work not only of attorneys, but also of secretaries, messengers, librarians, janitors, and others whose labor contributes to the work product for which an attorney bills her client . . .. We thus take as our starting point the self-evident proposition that the "reasonable attorney's fee" provided for by statute should compensate the work of paralegals, as well as that of attorneys.

Jenkins, 491 U.S. at 285, 109 S. Ct. at 2470. Additionally, echoing the reasoning of the WCJ and citing to other federal precedent, Claimant urges that "'the lower rates sought for law clerk services are reasonable and should be compensated as part of attorney's fees because the use of such services is a cost-efficient component of the modern

practice of law.'" Brief of Claimant at 10 (quoting Hoopa Valley Tribe v. Watt, 569 F. Supp. 943, 947 (N.D.Cal. 1983) (applying the fee-shifting provision of the federal Equal Access to Justice Act, 28 U.S.C. §2412)).

Employer advances the Commonwealth Court's position that the statute on its face enumerates specific types of costs for which reimbursement is allowed, but makes no mention of fees for the work of paraprofessionals such as paralegals and law clerks. According to Employer, this omission reflects a legislative intent that such fees should not be subject to shifting. Employer thus asserts that a plain-text analysis of the statute leaves little doubt that paraprofessional fees are entirely excluded from the provision under review, and submits that such a construction would be consistent with other cases in which this Court has interpreted the terms of Section 440(a) strictly. As an example, Employer cites to Phillips v. WCAB (Century Steel), 554 Pa. 504, 510-11, 721 A.2d 1091, 1094 (1999), in which this Court determined that Section 440 protects claimants, but not employers, from the costs of frivolous litigation. As for the Supreme Court's Jenkins decision, Employer notes that the dissent in that case was of the opinion that "attorney's fee" customarily indicates the fee charged by an attorney, and to construe it otherwise amounted to "linguistic juggling." Jenkins, 491 U.S. at 296, 109 S. Ct. at 2476 (Rehnquist, C.J., dissenting). Finally, Employer argues that, like any other fee-shifting statute, Section 440(a) abrogates the common law rule that the parties bear their own costs and, as such, must be strictly construed.

As a threshold matter, Employer's effort to exclude paraprofessional fees entirely from the purview of Section 440(a) draws little support from the Jenkins dissent. Indeed, the dissenting opinion fully accepted that such services were properly within the purview of the fee-shifting statute under review, and reasoned only that remuneration for those services should be obtained by including them as a component of attorney

office overhead rather than as a separate billing item or category. See Jenkins, 491 U.S. at 296, 109 S. Ct. at 2476 (Rehnquist, C.J., dissenting) (suggesting that "a prudent attorney customarily includes compensation for the cost of law clerk and paralegal services, like any other sort of office overhead--from secretarial staff, janitors, and librarians, to telephone service, stationery, and paper clips--in his own hourly billing rate").[4]

Certainly the position of the Jenkins dissent that remuneration for paraprofessional services should be channeled through overhead is in tension with Claimant's arguments here. Contrary to that dissenting position, however, in common experience segregation of paraprofessional services from overhead in accounting for legal services has emerged as a prevailing custom. Presumably, the practice reflects, among other things, a desire to apportion, as fairly and accurately as possible, charges for such services to the clients on whose behalf the services were rendered.

Again, both the majority and dissenting positions in Jenkins proceed on the assumption, with which we agree, that the general use of the term "attorney's fees" in a fee-shifting statute functions as an umbrella capturing a range of costs expended and services performed in producing attorney work product. Thus, as observed by the Justices in that case, general costs such as those expended for office supplies and secretarial work are ordinarily folded into the hourly rate which an attorney charges the client. That the General Assembly did not delineate the specific boundaries for the range of costs subject to compensation as an attorney's fee under Section 440(a) means only that we proceed by reference to pertinent principles of statutory

[4] The relevant legal question that divided the Justices in Jenkins concerned whether paraprofessional services should be compensated at market rate versus at their cost to the attorneys. See Jenkins, 491 U.S. at 284, 109 S. Ct. at 2469.

interpretation. See O'Rourke v. Commonwealth, 566 Pa. 161, 172, 778 A.2d 1194, 1201 (2001).

In interpreting statutory language, the Court's ultimate objective is to "ascertain and effectuate the intention of the General Assembly." 1 Pa.C.S. §1921(a). In ascertaining legislative intent, the Court must be guided by the primary purpose of the statute, see 1 Pa.C.S. §1921(c)(4), and may consider, among other things, the consequences of a particular interpretation, see 1 Pa.C.S. §1921(c)(6), as well as any administrative interpretations of the statute, see 1 Pa.C.S. §1921(c)(8). Moreover, it must presume, inter alia, that the General Assembly intended to favor the public interest as against any private interest, see 1 Pa.C.S. §1922(1), and did not intend an unreasonable result. See 1 Pa.C.S. §1922(5).

In our view, these factors weigh in favor of interpreting the phrase, "attorney's fee," to include reasonable charges by an attorney for legal work performed by paraprofessionals. That the WCAB -- which is part of the agency with primary responsibility for administering the Act -- has arrived at such conclusion is entitled to some deference, as noted above. This construction is also consistent with the "clear intent" of the provision at issue to protect the claimant from the costs of defending against bad-faith filings challenging legitimate compensation for injuries sustained. Phillips, 554 Pa. at 510, 721 A.2d at 1094. In this regard, it seems evident that, if paraprofessional fees were excluded from the fee shifting provision, a claimant might have to bear a substantial portion of such litigation costs, thus eroding the benefits that the General Assembly has elected to confer upon employees in exchange for the elimination of the latter's common law negligence remedies against the employer. See Thompson v. WCAB (USF&G Co.), 566 Pa. 420, 429, 781 A.2d 1146, 1151 (2001). It is also worth noting that allowing the recovery of paraprofessional fees as a component of

statutory attorney's fees is likely to promote the public's interest in efficient lawyering by helping to ensure that some tasks will be assigned to lower-cost personnel. Accord Jenkins, 491 U.S. at 288, 109 S.Ct. at 2471.

Nor are we persuaded by Employer's contention that a strict construction of the "attorney's fee" proviso must obtain because the common law rule directed that each litigant pay his own costs.[5] Other factors, such as those addressed above, are appropriately considered in construing the statute under review, and many of these are in substantial tension with the principle relied upon by Employer. Furthermore, Employer's reliance upon Phillips for the position that this Court has purportedly applied a narrow interpretation to Section 440(a) in the past is misplaced. The Phillips court determined that Section 440 was designed to protect claimants from the cost of frivolous litigation, but not to provide similar protection to employers. It did so based upon the statute's provision for fee shifting in one direction only. The Court simply was not presented with an ambiguous term.

We thus conclude that reimbursement of paraprofessional services is not precluded as a matter of law under Section 440 in instances where the attorney effectively passes such costs on to clients as a component of overhead reflected in a higher hourly rate for the attorney's own time. The only remaining issue, then, is whether the General Assembly intended to foreclose such reimbursement if (and only if) these expenses are instead passed on via separate line items on the attorney's bill. We find nothing in the Act to suggest a legislative intent to discourage application of the latter, and often more exact, method of charging for attorney work product. Indeed, to treat these two situations differently would mean that the portion of fees subject to

[5] This precept does not apply to statutes enacted after September 1, 1937. See 1 Pa.C.S. §1928(a). The Act, however, was enacted prior to that date. See supra note 1.

reimbursement would depend upon the fortuity of the attorney's billing method and/or the billing custom in the specific market in which the attorney works. We think it unlikely that the Legislature intended such a result.

Finally, it should not be overlooked that the General Assembly has circumscribed all fee awards in the workers' compensation setting according to an overarching requirement of reasonableness. See 77 P.S. §996(a) (authorizing workers' compensation judges to award "a reasonable sum" for, inter alia, attorneys' fees). The Pennsylvania Legislature has therefore provided a means for addressing any concerns regarding potential unfair billing practices, such as those identified by the Jenkins dissent pertaining to double recovery for paralegal time. See, e.g., Jenkins, 491 U.S. at 296, 109 S. Ct. at 2476 (Rehnquist, C.J., dissenting).

Accordingly, we hold that the term "attorney's fee" in Section 440(a) of the Workers' Compensation Act includes reasonable fees for legal services rendered by paraprofessionals such as paralegals, law clerks, and recent law graduates.[6] The order

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[6] This holding is consistent with the decisions of courts in other jurisdictions which have interpreted similar statutory fee-shifting provisions in a variety of settings. See, e.g., In re Busy Beaver Bldg. Ctrs., 19 F.3d 833, 848 (3d Cir. 1994) (awards to certain trustees under the Bankruptcy Code); Hoopa Valley Tribe, 569 F. Supp at 947 (actions under the Equal Access to Justice Act); Baldwin v. Burton, 850 P.2d 1188, 1199 (Utah 1993) (bad-faith civil actions or defenses); Continental Townhouses East Unit One Ass'n v. Brockbank, 733 P.2d 1120, 1127 (Ariz. Ct. App. 1986) (actions on a contract); Salton Bay Marina v. Imperial Irrigation Dist., 172 Cal. App. 3d 914, 951 (Cal. Ct. App. 1985) (inverse condemnation actions); Gill Sav. Ass'n v. International Supply Co., 759 S.W.2d 697, 704 (Tex. Ct. App. 1988) (lien foreclosures); Price v. Cole, 574 N.E.2d 403, 407 (Mass. App. Ct. 1991) (sanctions for frivolous appeals); In re Marriage of Ahmad, 555 N.E.2d 439, 444 (Ill. App. Ct. 1990) (appeals in marital dissolution matters); Taylor v. Chubb Group of Ins. Cos., 874 P.2d 806, 809 (Okla. 1994) (actions to obtain insurance proceeds); Blair v. Ing, 31 P.3d 184, 191 (Haw. 2001) (actions in assumpsit); see also Cline v. Rocky Mountain, Inc., 998 P.2d 946, 950-51 (Wyo. 2000) (construing a contractual attorney fee-shifting provision to subsume paraprofessional fees). But see Bill Rivers Trailers, Inc. v. Miller, 489 So.2d 1139, 1142 (Fla. Dist. Ct. App. 1986); Hines (continued . . .)

of the Commonwealth Court is reversed insofar as it held that these fees are not recoverable, and the fee award of the WCJ is reinstated.

Mr. Justice Castille files a dissenting opinion.

(. . . continued)
v. Hines, 934 P.2d 20, 28 (Idaho 1997) (finding Jenkins inapplicable to a state civil procedural rule pertaining to fee shifting); Johnson v. Naugle, 557 N.E.2d 1339, 1344 (Ind. Ct. App. 1990) (construing narrowly a provision for attorney fee shifting in a civil action based upon criminal activity, as such provision is "largely a penal measure").