

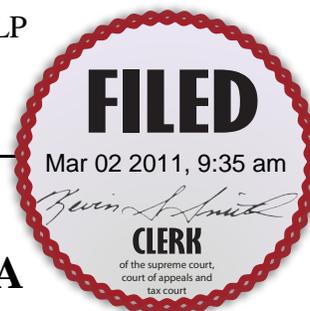
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IN THE
COURT OF APPEALS OF INDIANA

INDIANA SPINE GROUP, PC,

Appellant-Plaintiff,

vs.

HARDIGG INDUSTRIES,

Appellee-Defendant.

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No. 93A02-1008-EX-933

APPEAL FROM THE WORKER'S COMPENSATION BOARD OF INDIANA

Cause No. P-199707

Linda P. Hamilton, Chairperson

March 2, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Sondra Wagers, an employee of Hardigg Industries, received a work-related injury, and Indiana Spine Group, PC (“ISG”), provided her with services. When Hardigg Industries’ worker’s compensation carrier paid only a small portion of Wagers’ bill, ISG filed an Application for Adjustment of Claim for Provider Fee pursuant to Indiana Code section 22-3-3-5 seeking to recover the unpaid balance for the services it rendered to Wagers. The Indiana Worker’s Compensation Board denied ISG’s application because it was filed more than two years after the last date Wagers received compensation. We conclude that the two-year statute of limitations contained in Indiana Code sections 22-3-3-3 and -27 does not apply to medical service providers who file claims against employers and their worker’s compensation carriers to enforce their right to payment for services. We therefore reverse and remand for further proceedings.

Facts and Procedural History

On September 15, 2003, while employed by Hardigg Industries, Wagers sustained a work-related injury. On October 13, 2004, ISG provided services to Wagers. The services had been authorized by Hardigg Industries’ worker’s compensation carrier, AIG. Thereafter, Hardigg Industries and Wagers entered into a compromise settlement for \$19,500.00, which the Worker’s Compensation Board approved on July 20, 2005.

ISG billed AIG \$6219.00 for the services it rendered to Wagers on October 13, 2004. On February 24, 2005, AIG paid ISG only \$1067.64.

On June 17, 2009, ISG filed an Application for Adjustment of Claim for Provider Fee (“Application”) pursuant to Indiana Code section 22-3-3-5 seeking to recover an

unpaid balance of \$5031.98.¹ In the Application, ISG named Hardigg Industries as the employer and AIG as the insurance carrier. Indiana Code section 22-3-3-5 provides that the “pecuniary liability” of an employer for medical, surgical, hospital, or nurse service shall be limited to such charges as prevail as provided under Section 22-3-6-1(j) in the same community for a like service or product to injured persons. “Pecuniary liability,” in turn, means “the responsibility of an employer or the employer’s insurance carrier for the payment of the charges for each specific service or product for human medical treatment provided under IC 22-3-2 through IC 22-3-6 in a defined community, equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products.” Ind. Code § 22-3-6-1(j).

In January 2010, Hardigg Industries filed a motion to dismiss ISG’s Application on the ground that it was filed after Hardigg Industries and Wagers entered into the compromise settlement. The single hearing member denied Hardigg Industries’ motion to dismiss.

Thereafter, Hardigg Industries filed an application for review by the full Worker’s Compensation Board. In its brief to the Board, Hardigg Industries raised the statute of limitations. Following a hearing, the Board affirmed the single hearing member’s denial of Hardigg Industries’ motion to dismiss on the basis of the compromise settlement but reversed the single hearing member’s denial of the motion to dismiss on the basis of the statute of limitations. Appellant’s App. p. 6. ISG now appeals.

¹ ISG alleges that the unpaid balance is \$5031.98. However, our calculations show that the unpaid balance is actually \$5151.36. The source of the discrepancy is likely the Application itself, where ISG alleges that Hardigg/AIG paid \$1187.02 (instead of \$1067.64), leaving a properly calculated unpaid balance of \$5031.98. The amount of the check to ISG, however, is clearly \$1067.64. Appellant’s App. p. 58. We are unable to account for the \$119.38 difference given the record in this case.

Discussion and Decision²

ISG contends that the Board erred in granting Hardigg Industries' motion to dismiss its Application on the basis of the statute of limitations because "[t]here is no limitation period in the Worker's Compensation Act for medical providers to recover balance billing owed for medical treatment partially reimbursed by worker's compensation insurers." Appellant's Br. p. 2. Hardigg Industries, on the other hand, argues that the two-year statute of limitations contained in Indiana Code sections 22-3-3-3 and -27 applies and therefore the Board properly dismissed ISG's Application.

The Board's factual findings are to be affirmed if they are supported by substantial evidence. *Smith v. Champion Trucking Co., Inc.*, 925 N.E.2d 362, 364 (Ind. 2010). To the extent the issue involves a conclusion of law based on undisputed facts, it is reviewed de novo. *Id.* Here, the Board's ruling rested largely on undisputed facts; therefore, the question is one of statutory interpretation to be reviewed de novo. *Id.*

The Worker's Compensation Act sets forth two statutes of limitations. The first, Indiana Code section 22-3-3-3, involves the initiation of a worker's compensation claim:

The right to compensation under IC 22-3-2 through IC 22-3-6 shall be forever barred unless within two (2) years after the occurrence of the accident, or if death results therefrom, within two (2) years after such death, a claim for compensation thereunder shall be filed with the worker's compensation board.

Based on this section, an injured employee must initiate a claim for TTD benefits, PPI benefits, and/or medical services within two years of the work-related accident. There is

² We acknowledge that *Indiana Spine Group, PC v. Pilot Travel Centers, LLC*, 931 N.E.2d 435 (Ind. Ct. App. 2010), involves the very same issue as in this case. However, the Indiana Supreme Court granted transfer in *Pilot Travel* on February 17, 2011. According to Indiana Appellate Rule 58, "If transfer is granted, the opinion or not-for-publication memorandum decision of the Court of Appeals shall be automatically vacated" with exceptions not applicable here.

no dispute that Wagers timely sought benefits under the Act or that she presented a compensable injury claim. We therefore conclude that Indiana Code section 22-3-3-3 does not bar ISG's claim.

We now turn to Indiana Code section 22-3-3-27:

(a) The power and jurisdiction of the worker's compensation board over each case shall be continuing and from time to time it may, upon its own motion or upon the application of either party, on account of a change in conditions, make such modification or change in the award ending, lessening, continuing, or extending the payments previously awarded, either by agreement or upon hearing, as it may deem just, subject to the maximum and minimum provided for in IC 22-3-2 through IC 22-3-6.

(b) Upon making any such change, the board shall immediately send to each of the parties a copy of the modified award. No such modification shall affect the previous award as to any money paid thereunder.

(c) The board shall not make any such modification upon its own motion nor shall any application therefor be filed by either party after the expiration of two (2) years from the last day for which compensation was paid.^[3]

Ind. Code § 22-3-3-27. Thus, Section 22-3-3-27 establishes a two-year statute of limitations for the "modification" of an award due to a "change in conditions," and this two-year period begins to run on the last day for which compensation (that is, TTD or PPI benefits) is paid to an injured employee.

Here, however, there are no changed conditions requiring a modification of the award of worker's compensation benefits to Wagers. The medical care that ISG provided to Wagers was authorized by Hardigg Industries. The issue presented in ISG's Application is the amount of ISG's bills that Hardigg Industries/AIG must pay (in other

³ This subsection was amended in 2006 (after Wagers' injury), but the amendment does not affect the analysis in this case. See P.L. 134-2006, Sec. 7 (deleting portion of subsection (c) which stated that applications for PPI were barred unless filed within one year from the last day for which compensation was paid).

words, the pecuniary liability of the employer and its insurance carrier), not whether the bills must be paid at all. Therefore, the two-year statute of limitations contained in Indiana Code section 22-3-3-27 does not apply either.

Moreover, applying the statute of limitations could lead to absurd results. That is, Indiana Code section 22-3-3-4(c) provides that within the statutory period for modification/review set out in Section 22-3-3-27,

the employer may continue to furnish a physician or surgeon and other medical services and supplies, and the worker's compensation board may . . . require that treatment by that physician and other medical services and supplies be furnished by and on behalf of the employer as the worker's compensation board may deem necessary to limit or reduce the amount and extent of the employee's impairment.

Thus, as specifically envisioned by the statute, an employee could very well receive medical services up to the end of the two-year statutory period. The medical service provider would then have little or no time to enforce its right to payment for those services. The legislature could not have intended to leave medical service providers with little incentive to treat injured workers under the Act once an employee's PPI has been established.

In addition, we fail to see the wisdom of tying a medical service provider's ability to seek full payment due under the Act to the last date for which the employee received compensation. While a medical service provider is able to determine the date of an injured employee's accident, the provider generally does not have ready access to the dates of compensation to the employee, which vary widely from case to case. Rather, a statute of limitations for claims like that asserted by ISG would seem to be more appropriately related to the date of service.

Although Hardigg Industries makes various arguments on appeal concerning *Colburn v. Kessler's Team Sports*, 850 N.E.2d 1001 (Ind. Ct. App. 2006), *reh'g denied, trans. denied*, and *Swift v. State Farm Insurance Co.*, 819 N.E.2d 389 (Ind. Ct. App. 2004), we find that this Court's more recent opinion in *Indiana Spine Group, P.C. v. International Entertainment Consultants*, 940 N.E.2d 380 (Ind. Ct. App. 2011), *trans. pending*, which involves the same appellate attorneys as this appeal, sufficiently addresses these arguments. *See Int'l Entm't*, 940 N.E.2d at 382 (a medical provider does not receive "compensation"; an employer's liability to a medical provider is called "pecuniary liability"), 383 (compensation is an amount paid to an employee, and Indiana Code section 22-3-3-3 does not apply to claims that are not seeking compensation).

Finally, ISG argues that because the Act is silent as to the statute of limitations for claims involving the pecuniary liability of employers to medical service providers, the general, ten-year statute of limitations in Indiana Code section 34-11-1-2 should apply. *See Ind. Code § 34-11-1-2(a)* ("A cause of action that . . . is not limited by any other statute . . . must be brought within ten (10) years."). We agree with the *Entertainment Consultants* Court that the legislature enacted the general statute of limitations for the very purpose of supplying a statute of limitations when one has not otherwise been provided by a more specific statutory scheme. 940 N.E.2d at 383-84. Because ISG's claim is timely under Indiana Code section 34-11-1-2, we conclude that the Board erred by dismissing ISG's Application. We therefore reverse and remand for further proceedings.

Reversed and remanded.

BAKER, J., and BARNES, J., concur.