

A. P. v. Personnel Department, Inc.

(October 1, 2008)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

A. P.

Opinion No. 38-08WC

v.

By: Phyllis G. Phillips, Esq.
Hearing Officer

Personnel Department, Inc.

For: Patricia Moulton Powden
Commissioner

State File No. Y-53713

RULING ON DEFENDANT'S MOTION TO DISMISS

At issue in this claim is whether Defendant should be obligated to pay attorney's fees to Claimant's attorney. Claimant's attorney alleges that Defendant was notified of its attorney's lien at the time Defendant issued payment of indemnity benefits directly to Claimant, contrary to Claimant's attorney's directive and in contravention of the terms of the approved lien. Defendant counters that Claimant's attorney's lien was never perfected as required by Workers' Compensation Rule 10.5000 and that therefore it bears no responsibility for the unpaid fees.

The relevant facts are not disputed. In April 2007 Claimant retained the law firm of Biggam, Fox & Skinner to pursue workers' compensation benefits on her behalf relating to a right knee injury that occurred on September 22, 2006. Pursuant to Workers' Compensation Rule 10.5000, her attorney filed a request for an attorney's lien with the Department. The Department granted the lien on April 25, 2007. In doing so, the Department advised Claimant's attorney that, "In the event you wish to *enforce* this lien you must present the department with an itemized statement detailing both the work performed and the hours billed in this matter, pursuant to Rule 10.5000." (Emphasis in original).

On August 6, 2007 the Department issued an interim order in which it directed Defendant to pay certain indemnity benefits to Claimant. Upon receipt of the interim order, Claimant's attorney corresponded with Defendant's attorney and requested that payment of the indemnity benefits due be forwarded "to our office in Claimant's name." Defendant failed to do so and instead, in early September 2007 it forwarded payment directly to Claimant.

Upon learning that Defendant had sent payment directly to Claimant, Claimant's attorney made several attempts to contact Claimant, but to no avail. As a result, Claimant's attorney remained unpaid for the services it had rendered in pursuit of the benefits paid to Claimant.

In November 2007, more than two months after Defendant had issued payment, Claimant's attorney corresponded with the Department, requesting that it issue an order directing Defendant to pay attorney's fees "pursuant to our approved attorney lien." Appended to the request was a spreadsheet detailing the work performed and the hours billed. The Department declined to issue the requested order and instead referred the matter to the formal hearing docket. Defendant's motion to dismiss followed.

Discussion

Vermont's Workers' Compensation Act states that attorney's lien requests "shall be approved by the commissioner," and that "when so approved they may be enforced against compensation awards in such manner as the commissioner may direct." 21 V.S.A. §682. Workers' Compensation Rule 10.5000 details the manner in which the commissioner has directed such liens be enforced, as follows:

A request for a lien must be made to the Director in writing, with a copy to the claimant, and must include a copy of the written fee agreement executed by the claimant *and an itemized statement detailing both the work performed and the hours billed.* (Emphasis added).

The Department notified Claimant's attorney of the requirement that an itemized statement be filed before an approved lien could be enforced in its April 2007 correspondence. Claimant's attorney failed to comply with this requirement, however, until some two months already had passed from the date the interim order had issued. Notably, Defendant was obligated to issue payment pursuant to the interim order within 21 days, or else risk the imposition of penalties and interest against it pursuant to 21 V.S.A. §650(e). Under these circumstances, Claimant's attorney must bear ultimate responsibility for the fact that its lien was not satisfied, not Defendant.

It is true that Claimant's attorney probably would have been able to secure payment for its services had Defendant complied with its request that the indemnity benefits due Claimant be forwarded to the attorney's office rather than mailed directly to Claimant. Professional courtesy might dictate that Defendant be more cognizant of such requests. The fact remains, however, that Claimant's attorney's lien was not perfected until it was too late for Defendant lawfully to comply. As a result, there is no basis for legal liability to attach.

Defendant's Motion to Dismiss is **GRANTED**.¹

DATED at Montpelier, Vermont this 1st day of October 2008.

Patricia Moulton Powden
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§670, 672.

¹ Having dismissed Claimant's claim for attorney's fees, there is no need to reach Defendant's alternative motions.