IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

HOWARD VANVLIET,	)	
	)	C.A. No. 11A-09-003 JTV
Claimant-Below,	)	
Appellant,	)	
	)	
v.	)	
	)	
D & B TRANSPORTATION,	)	
	)	
Employer-Below ,	)	
Appellee.	)	

Submitted: July 5, 2012
Decided: November 28, 2012

Kristi Vitola, Esq., Schmittinger & Rodriguez, Dover, Delaware. Attorney for Appellant.

Cheryl AnnWard, Esq, Reger, Rizzo & Darnall, LLP, Wilmington, Delaware. Attorney for Appellee.

Upon Consideration of Appellant's
Appeal of Decision of the
Industrial Accident Board
REVERSED & REMANDED

VAUGHN, President Judge

OPINION

This is an appeal from a decision of the Industrial Accident Board ("the Board"). The claimant, Howard Vanvliet ("the claimant"), petitioned for payment of medical expenses for neck surgery to treat a work-related injury. The doctor who performed the surgery was not certified under 19 *Del C.* § 2322D. The surgery was not preauthorized and did not fall within the single office visit or single treatment provision of 19 *Del. C.* § 2322D(b). The employer, D & B Transportation ("the employer"), filed a motion to dismiss the petition. The Board granted the motion and dismissed the petition. The Board held that when a claimant who is a Delaware resident incurs a medical expense from a doctor who is not certified under 2322D(a)(1), and where the treatment is not preauthorized and does fall within 2322D(b), the employer is not liable for the medical expense as a matter of law. For the reasons which follow, I have concluded that the fact that the doctor is not certified and the medical treatment is not preauthorized is not a complete defense for the employer. Accordingly, the Board's decision will be reversed and the matter remanded for further proceedings.

FACTS

On February 14, 2001, the claimant injured his neck while unloading pallets from a truck while working in the course of his employment with the employer. In August of that year, he underwent surgery to his injured spine, and received disability benefits from February 15, 2001 through August 25, 2003. As a result of the injury, the claimant received a payment from the employer for a 27.5% permanent impairment to his cervical spine. The claimant also later received payment for

medical expenses related to the spinal injury in 2005, and two weeks of payment for disfigurement in 2010 related to his 2001 surgery.

On August 11, 2010, the claimant underwent a second surgery to his spine, performed by a Maryland surgeon, Dr. Sonti. Dr. Sonti's medical practice is in Salisbury, Maryland. Dr. Sonti was not certified under 19 *Del. C.* § 2322D(a)(1) at the time he performed the claimant's surgery.[1] Either all or almost all of the other members of Dr. Sonti's medical practice firm were certified. Subsequent to the surgery, Dr. Sonti became certified.

On August 23, the claimant filed two petitions: one seeking retroactive preauthorization for the cervical spine surgery that had been performed twelve days earlier, and one seeking compensation for total disability and the medical expenses related to the 2010 surgery. In response to the claimant's petitions, the employer requested production of records concerning preauthorization of the surgery. Some time in October after receiving those responses, the employer discovered that the surgery indicated in the preauthorization petition had already been performed.

On November 12, 2010, the employer requested a hearing with the Board seeking dismissal of the claimant's claim for Dr. Sonti's medical expense on the grounds that Dr. Sonti was not a certified health care provider under the Delaware Workers' Compensation Act or regulations and did not have preauthorization from

[1] Certification under 2322D(a)(1) to treat workers' compensation patients is separate from licensing. In other words, a doctor can be fully licensed but not certified under 2322D(a)(1).

the employer or its insurance carrier to perform the August 11 surgery. On December 8, 2010, the Board heard arguments regarding the employer's motion to dismiss.

At the hearing the employer argued that the claimant's medical treatment was not compensable, because 19 *Del. C.* § 2322D(a)(1) mandates that the treating health care provider be certified or preauthorized to give treatment. The claimant argued that the Board's prior decision in *Bertha Polk v. Green Acres Pavilion*[2] was controlling and stands for the proposition that under 19 *Del. C.* § 2322C(6), the treating health care provider need not be certified or preauthorized to give medical treatment as long as the medical treatment was "reasonable, necessary, and related to the work injury."[3] The claimant further argued that if the Board found that the treatment was reasonable, necessary, and related to the work injury, then the preauthorization should relate back to before the surgery, because forcing a claimant to delay surgery to wait for preauthorization is a "technical requirement" that would constitute "unreasonable form over substance."

On December 21, 2010, the Board issued an order dismissing the claimant's claim for Dr. Sonti's medical expense.[4] In doing so, the Board determined, as a

---

[2] Del. IAB Hearing No. 1253843 (Dec. 4, 2009). In *Polk*, the Board carved out an exception to 2322D(a)(1) where the claimant had become a non-resident of Delaware.

[3] IAB Tr. at 14. The claimant asserted that "[t]he consequence for treating with a non-certified provider out of state is that you're not entitled to the presumption of reasonableness that arises by virtue of compliance with the practice guidelines." *Id*. at 13.

[4] The claim for total disability compensation is not at issue in this appeal. In denying the employer's motion, the Board found that "the mere fact that treatment is unauthorized (and, hence, not compensable under the Worker's Compensation Act) does not mean that it rises to the level of

matter of statutory law, that "if an injured worker resides in and/or treats with Delaware providers, those providers must either be certified or receive preauthorization for the treatment to be rendered to the extent that future reimbursement will be sought under the Worker's Compensation Act."[5] In coming to this legal conclusion, the Board found, based on prior IAB decisions, that although 19 *Del. C.* § 2322C(6) does not create a *per se* rule that treatment by a non-certified or non-preauthorized health care provider is not compensable,[6] 19 *Del. C.* § 2322D(a)(1) mandates that the health care provider be certified or preauthorized to provide medical treatment when the injured employee resides or is treated in Delaware.[7]

On September 17, 2011, the claimant appealed the Board's dismissal of his petition for medical expenses to this Court. On February 2, 2012, the employer moved to dismiss the claimant's appeal as being untimely filed pursuant to 19 *Del.*

---

unreasonable treatment such as would break the chain of causation." The parties later reached a settlement for payment of total disability benefits from August 11, 2010 through November 2, 2010.

[5] IAB Order, at 6.

[6] *Id.* at 4 (citing *Bertha Polk v. Green Acres Pavilion*, Del. IAB Hearing No. 1253843 (Dec. 4, 2009)).

[7] *Id*. at 4-6. The Board cited *Kathleen Mason v. State of Delaware*, Del. IAB Hearing No. 1198102 (Jan. 15, 2010) (denying compensation when both the claimant and treating non-certified and non-preauthorized health care provider were located in Delaware), and *Suzanne M. Shay v. Christiana Care Health Services/Visiting Nurses Association*, Del. IAB Hearing No. 1090250 (May 25, 2010) (denying compensation when the claimant, a Delaware resident, received unauthorized medical treatment from an uncertified provider in Baltimore, Maryland).

C. § 3249. On April 20, 2012, this Court denied the employer's motion to dismiss. This is the Court's decision regarding the claimant's appeal of the Board's dismissal of his petition for medical expenses.

PARTIES' CONTENTIONS

The claimant contends that the Board erred in interpreting the Workers' Compensation Act. He contends that 19 *Del. C.* § 2322C(6) does two things. First, it creates a presumption that medical services are reasonable and necessary if the treating health care provider is certified under § 2322D or is preauthorized by the employer or insurance carrier to give such treatment. Second, he contends, it provides that services provided by health care providers who are not certified and which are not preauthorized shall not be presumed reasonable and necessary, subject to the exception in 2322D(b).[8] These contentions are based on the first and second sentences of the provision, respectively. The second sentence, the claimant contends, creates an inference or implication that such services may still be recovered if the claimant can prove to the Board that they were reasonable and necessary for his work-related injury.

The employer contends that 19 *Del. C.* § 2322D(a)(1) is unambiguous, and that it mandates that "health care providers must be certified under the worker compensation guidelines or must seek preauthorization for treatment/surgery."

[8] 2322D(b) is not relevant in this case and will not be further mentioned.

STANDARD OF REVIEW

The court's scope of review for an appeal of the Board's decision is limited to examining the record for errors of law and determining whether substantial evidence is present on the record to support the Board's findings of fact and conclusions of law.[9] Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[10] "When the issue raised on appeal from the IAB is exclusively a question of the proper application of the law, review by this Court is *de novo*."[11]

DISCUSSION

The issue which I consider is whether 2322D(a)(1) renders a claimant's claim for a medical expense unrecoverable, as a matter of law, where the health care provider is not certified under that section and the procedure is not preauthorized.

19 *Del. C.* § 2322D(a)(1) states in relevant part:

> Certification *shall be required* for a health care provider to provide treatment to an employee, pursuant to this chapter, *without the requirement that the health care provider first preauthorize* each health care procedure, office visit or health care service to be provided to the employee with the employer or insurance carrier.[12]

---

[9] *Roland v. Playtex Prods., Inc.*, 2003 WL 21001022, at *1 (Del. Super. Feb 3, 2005).

[10] *Id.* (quoting *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)).

[11] *Pugh v. Wal-Mart Stores, Inc.*, 2007 WL 1518970, at *2 (Del. Super. May 2, 2007), *aff'd*, 945 A.2d 588 (Del. 2008).

[12] 19 *Del. C.* § 2322D(a)(1) (emphasis added).

Also relevant to the analysis is19 *Del. C.* § 2322C(6), which states in relevant part:

> Services rendered by any health care provider certified to provide treatment services for employees *shall be presumed*, in the absence of contrary evidence, *to be reasonable and necessary* if such services conform to the most current version of the Delaware health care practice guidelines. Services provided by health care providers that are *not* certified *shall not be presumed reasonable and necessary unless* such services are preauthorized by the employer or insurance carrier . . . [13]

When interpreting a statute, the goal is to determine and give effect to the legislative intent as expressed in the statue itself.[14] In performing this analysis, the court will give statutory words their commonly understood meanings, and it "may not assume that an omission was the result of an oversight on the part of the General Assembly."[15] Where the statutory language is clear on its face and is fairly susceptible to only one reading, the unambiguous text will be construed accordingly.[16] "The statute is ambiguous if it is susceptible of two reasonable interpretations or if a literal reading of its terms would lead to an unreasonable or

---

[13] 19 *Del. C.* § 2322C(6) (emphasis added).

[14] *Progressive N. Ins. Co. v. Mohr*, 47 A.3d 492, 495 (Del. 2012).

[15] *Gen. Motors Corp. v. Burgess*, 545 A.2d 1186, 1191 (Del. 1988) (citations omitted).

[16] *Progressive*, 47 A.3d at 495.

absurd result not contemplated by the legislature."[17] If the statute is ambiguous, the court will read each section of the statute in light of all the others to produce a harmonious whole,[18] and will resort to other sources, including relevant public policy, for guidance as to the statute's apparent purpose.[19]

I find that there is some ambiguity concerning the compensability of medical services performed by an uncertified doctor which are not preauthorized. 19 *Del. C.* § 2322D(a)(1) does clearly require that a doctor must be certified to provide services to a claimant pursuant to the Workers' Compensation Act. The Board inferred from this language that services performed by an uncertified doctor are not recoverable under the Act. However, the statute does not expressly state that the employer is not liable for a bill for a medical service which is, in fact, reasonable and necessary for a work-related injury, performed by an uncertified physician who has not obtained preauthorization.

19 *Del. C.* § 2322C(6) states that services performed by an uncertified doctor shall not be presumed reasonable and necessary unless the services are preauthorized. The key to the ambiguity in this statute is the use of the word "presumed." If services performed by an uncertified doctor upon a resident claimant, which are not preauthorized, are not recoverable as a matter of law, why is the word "presumed"

---

[17] *CML V, LLC v. Ba*x, 28 A.3d 1037, 1041 (Del. 2011) (citations omitted).

[18] *Delaware Bay Surgical Servs., P.C. v. Swiers*, 900 A.2d 646, 652 (Del. 2006).

[19] *Progressive*, 47 A.3d at 496.

there, and does its presence suggest that the claimant may still recover for those services if he can prove them to be reasonable and necessary?

Because the statutes involved are fairly susceptible to two reasonable, conflicting interpretations as to whether certification or preauthorization is necessary in order for the claimant to recover, they are ambiguous, and the court must determine which interpretation best furthers the legislative purpose and policy goals of the Workers' Compensation Act.[20]

One of the Workers' Compensation Act's purposes is "to provide a scheme for assured compensation for work-related injuries without regard to fault."[21] Due to this remedial purpose, Delaware courts have liberally interpreted any reasonable doubts in the Act in favor of the worker, "because it was for the workers' benefit that the act was passed."[22] These policies are embodied in 19 *Del. C.* § 2322(a), which provides that "[d]uring the period of disability the employer *shall furnish* reasonable surgical, medical, dental, optometric, chiropractic and hospital services . . . as and when needed."[23]

Bearing these principles in mind, I resolve the ambiguity by concluding that if medical services, which have not been preauthorized, are performed by an

---

[20] *See id.* at 500.

[21] *Konstantopoulos v. Westvaco Corp*., 690 A.2d 936, 939 (Del. 1996).

[22] *Hirneisen v. Champlain Cable Corp*., 892 A.2d 1056, 1059 (Del. 2006) (citing 2A Norman J. Singer, *Sutherland Statutory Construction* (6th Ed. 2000) § 75:3 at 26)). *See also Lawhorn v. New Castle County*, 2006 WL 1174009, at *3 (Del. Super. May 1, 2006).

[23] 19 *Del. C.* § 2322(a) (emphases added).

uncertified physician, the claimant may still recover for those services if he can prove that they are reasonable and necessary for his work-related injury. In reaching this conclusion, I am influenced by the absence of any language in 2322D(a)(1) which states that services performed by an uncertified physician, and which are not preauthorized, cannot be recovered; and by my view that if the Board's conclusion is correct, there does not seem to be any point or purpose to the General Assembly's use of the word "presumed" in the second sentence of 2322C(6).

Having reached the conclusion that the claimant may still recover for Dr. Sonti's medical expense if he can prove that the neck surgery was reasonable and necessary for his work-related injury, I emphasize that 2322D(a)(1) does require a health care provider to become certified if the doctor wishes to perform medical services for workers' compensation patients without preauthorization. There are significant benefits to becoming certified and otherwise complying with the health care payment system and the health care practice guidelines. For example, as mentioned above, the certified health care provider enjoys a presumption that his treatment is reasonable and necessary, whereas an uncertified doctor enjoys no such presumption. 19 *Del. C.* § 2322F(c) provides that preauthorized evaluations, treatments or therapy are to be paid within 30 days of the submission of an invoice unless the compliance with the preauthorization is contested in good faith. Subsection (d) provides for the payment of treatments, evaluations or therapy provided by a certified health care provider, and states that the health care provider shall be paid within 30 days of receipt of the invoice unless the treatment's compliance with the health care payment system or practice guidelines are contested

in good faith. As another example, 2322F(g) subjects doctors who violate 2322D to a significant fine of not less than $1,000 and not more than $5,000. Treating a claimant without being certified or having obtained preauthorization violates 2322D(a)(1).

Therefore, the case is ***reversed*** and ***remanded*** to the Board for further proceedings consistent with this opinion.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.
President Judge

cc: Prothonotary
Order Distribution
File