COLORADO COURT OF APPEALS
No. 93CE0003 W.C. No. 4-120-774 & 4-122-999

OPENING BRIEF OF COLORADO MUNICIPAL LEAGUE AND COUNTY WORKERS' COMPENSATION POOL AS AMICI CURIAE

CITY OF THORNTON AND CIRSA,

Petitioners,

v.

THE INDUSTRIAL CLAIM APPEALS OFFICE OF THE STATE OF COLORADO AND KENT REPLOGLE,

Respondents.

Tami A. Tanoue, No. 12952
GRIFFITHS & TANOUE, P.C.
1860 Blake Street, Suite 550
Denver, CO 80202
(303) 298-1601

Geoffrey T. Wilson, No. 11574
1600 Lincoln Street, Suite 2100
Denver, CO 80204
(303)831-6411

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The Colorado Municipal League ("CML") and the County Workers' Compensation Pool ("CWCP"), amici curiae, submit the following as their opening brief.

INTEREST OF THE AMICI

CML and CWCP appear in support of the Petitioners, the City of Thornton and CIRSA. CML and CWCP respectfully urge the Court to reverse the order of the Industrial Claim Appeals Panel ("ICAP") in this case.

CML is a non-profit voluntary association of 251 member municipalities located throughout the State of Colorado. Those members include all 68 home rule municipalities, all municipalities greater than 2,000 in population, and the vast majority of those having a population of 2,000 or less. As employers they are, of course, subject to the workers' compensation laws.

One of CML's purposes is to represent its members before the appellate courts on cases of statewide municipal concern. As employers, CML's members are directly affected by interpretations of the workers' compensation laws. CML also represents its members before the General Assembly on legislation of statewide municipal concern, including Senate Bill 91-218 ("S.B. 218"), a portion of which is at issue here. CML staff participated in activities leading to the enactment of S.B. 218.

CWCP is a public entity self-insurance pool formed pursuant to C.R.S. §8-44-204 to provide workers' compensation coverages to counties. 48 of Colorado's 63 counties obtain workers'

compensation coverages by participating in CWCP. Both CWCP, as a provider of workers' compensation coverages, and its member counties, as employers subject to the workers' compensation laws, are directly affected by interpretations of the workers' compensation laws.

In addition, this case arises in the context of governmental public safety activities and so is of particular significance and substantial concern to the member local governments of both CML and CWCP. Given their fiscal constraints, including those newly established by the Colorado Constitution, Article X, Section 20, local governments are among those who can least afford to bear increases in the cost of workers' compensation claims.

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

This brief addresses the following issue:

Does C.R.S. §8-41-301(2)(b) limit an award of temporary disability benefits to twelve weeks?

STATEMENT OF THE CASE

CML and CWCP adopt the statement of the case appearing in the Petitioners' opening brief.

ARGUMENT

I. Summary of the Argument.

C.R.S. §8-41-301(2)(b) can and should be read literally and unambiguously to lead to a reasonable result. The ICAP's interpretation is contrary to the plain meaning of the statute,

inconsistent with its legislative history, and inconsistent with established rules of statutory construction.

II. Introduction.

By S.B. 218, the General Assembly in 1991 made comprehensive reforms to the workers' compensation laws. Review of the reforms reveals that one theme of S.B. 218 was to control costs to employers of workers' compensation claims by limiting and defining benefits, reducing administrative discretion, and reducing the necessity for litigation. That theme is reflected in the legislative declaration, C.R.S. §8-40-102, as amended by S.B. 218:

> It is the intent of the general assembly that the "Workers' Compensation Act of Colorado" be interpreted so as to assure the quick and efficient delivery of disability and medical benefits to injured workers at a reasonable cost to employers, without the necessity of any litigation, recognizing that the workers' compensation system in Colorado is based on a mutual renunciation of common law rights and defenses by employers and employees alike.

Consistently with that theme, S.B. 218 placed limitations on many types of benefits, including: eliminating benefits in certain instances, such as participation in voluntary recreational activities; providing for the cessation of temporary total disability benefits without a hearing under defined circumstances; limiting permanent total disability benefits; and limiting discretion in the calculation of permanent partial disability awards. Additional limitations -- one of which is at issue here -- dealt with C.R.S. §8-41-301, concerning benefits for "mental impairment," i.e., job-related mental or emotional stress.

C.R.S. §8-41-301(2)(b) provides in part as follows:

> Notwithstanding any other provision of articles 40 to 47 of this title, where a claim is by reason of mental impairment the claimant shall be limited to twelve weeks of medical impairment benefits which shall be in an amount not less than one hundred fifty dollars per week and not more than fifty percent of the state average weekly wage, inclusive of any temporary disability benefits.

This language can be read straightforwardly and unambiguously to limit the total value of a mental impairment claim -- whether temporary or permanent -- to no more than fifty percent of the state average weekly wage for a period not to exceed twelve weeks. Such a reading is both reasonable and consistent with the overall theme of S.B. 218.

However, in this case, the ICAP found an ambiguity and, based on that ambiguity, interpreted the language in a fashion that is directly contrary to both its plain meaning and the legislative intent. The ambiguity arose only because the ICAP turned to another statute -- C.R.S. §8-42-107(8)(a) -- to define the term "medical impairment benefits" as used in C.R.S. §8-41-301(2)(b). Having found an ambiguity in this fashion, the ICAP then rewrote the twelve-week limitation in C.R.S. §8-41-301(2)(b) to apply only to permanent disability benefits, not to temporary disability benefits, and affirmed an award of temporary benefits from December 16, 1991 and ongoing. The ICAP's interpretation is erroneous and should be reversed by the Court.

III. The ICAP's interpretation is contrary to the plain meaning of C.R.S. §8-41-301(2)(b).

As noted above, C.R.S. §8-41-301(2)(b) can be read literally to place a twelve week cap on benefits for mental impairment claims

by limiting the total value of such a claim -- whether temporary or permanent -- to no more than fifty percent of the state average weekly wage for a period not to exceed twelve weeks. The ICAP's interpretation contradicts the plain meaning of this statute.

First, the ICAP turned to C.R.S. §8-42-107(8)(a) to define the term "medical impairment benefits" as used in C.R.S. §8-41-301(2)(b). This importation of a concept from the former into the latter was contrary to the plain language of the latter, the limitations of which apply to all mental impairment claims "[n]otwithstanding any other provision of articles 40 to 47 of this title" [emphasis added].

Moreover, the ICAP's interpretation of the term "inclusive of any temporary disability benefits" twisted the term to mean "exclusive of any temporary disability benefits." The words of a statute should be given their generally accepted meaning. Davis v. Izaak Walton League of America, 717 P.2d 984 (Colo. App. 1985). Here, far from a generally accepted meaning, the word "inclusive" has been interpreted to mean its opposite.

In addition, a statute should be considered in light of its context. Carter v. City and County of Denver, 114 Colo. 33, 160 P.2d 991 (1945). Here, the ICAP failed to consider the respective contexts of the two statutes; the context of the term "medical impairment benefits" as used in C.R.S. §8-42-107(8)(a) is entirely different from the context of C.R.S. §8-41-301(2)(b). In the former statute, the term is used only in relation to a claim for an injury which results in permanent impairment. In the latter

statute, the term is used in relation to any claim arising by reason of mental impairment whether permanent or temporary. Given the differing contexts, it was inappropriate to attempt to interpret the latter by turning to the former.

Finally, where the meaning of a statute is plain, its language is not subject to construction. Hill v. Sleep Products, Inc., 41 Colo. App. 133, 584 P.2d 93 (1978). By its plain terms, C.R.S. §8-41-301(2)(b) places a twelve week cap on benefits for mental impairment claims. By its plain terms, it includes temporary disability benefits within that cap, rather than excluding them. Thus, it was unnecessary for the ICAP to engage in any construction of the statute, much less one which turned its meaning upside-down.

IV. The ICAP's interpretation is inconsistent with the legislative history.

As noted above, amici do not concede that C.R.S. §8-41-301(2)(b) is an ambiguous statute, since a literal reading of it leads to a reasonable result. A strained interpretation, as adopted by the ICAP, should not be resorted to where the language of a statute is clear and involves no absurdity. Harding v. Industrial Commission, 183 Colo. 52, 515 P.2d 95 (1973).

However, a statute may be considered ambiguous where reasonable persons have construed it in two different ways. 2A Norman J. Singer, Sutherland Statutory Construction §46.04 (5th ed. 1992). If the Court determines that C.R.S. §8-41-301(2)(b) is ambiguous, it is appropriate to turn to the legislative history as an aid. Dodge v. Department of Social Services, 657 P.2d 969 (Colo. App. 1982).

Statements of legislators form a part of the legislative history of a statute and are appropriately used by the Court in construing a statute. Hurst Construction Co. v. Ramey, 821 P.d 858 (Colo. App. 1991). In this case, legislators' comments during conference committee deliberations on S.B. 218 make clear an intent to limit recovery for mental impairment to twelve weeks, and an absence of any intent to distinguish between permanent and temporary benefits in applying that limitation:

> What we tried to do is to somewhat -- what New Mexico did which is to set up a limited recovery for mental impairment. When we did the House bill the first time around we said mental impairment is not a recoverable injury and then it was pointed out that you would be in tort and whether you wanted to be arguing that in tort.
>
> We were better off keeping it as a recoverable injury but limited and down fairly narrowly and the criticism is that we've stricken a lot of language that gives a lot of framework as to how you show a claimant's emotional mental stress.
>
> What the amendment would do is be -- to return to the current language law or structure in which how you prove a claim for emotional distress or mental impairment and leave the limiting -- and we have to change it from months to twelve weeks and then ties into mental impairment benefits. That's what the amendment does.
>
> Basically what we did is go back to the Colorado law with the limitations of twelve weeks of coverage.

Colorado Legislative Council Tape, Conference Committee Hearing on S.B. 218, May 4, 1991. These statements demonstrate that conference committee members viewed the language of C.R.S. §8-41-301(2)(b) as limiting mental impairment benefits to twelve weeks, and that they made no distinction between permanent and temporary benefits.

V. The ICAP's interpretation is inconsistent with established rules of statutory construction.

In interpreting the twelve-week limitation on mental impairment benefits to be exclusive of temporary benefits, the ICAP violated several rules of statutory construction.

First, a statute susceptible to more than one interpretation must be construed in light of the apparent legislative intent and purpose, considering the end the statute was designed to accomplish, and the consequences which would follow from alternative constructions. Mooney v. Kuiper, 194 Colo. 477, 573 P.2d 538 (1978). As noted above, the avowed intent and purpose of C.R.S. §8-41-301(2)(b) were to impose "limitations of twelve weeks of coverage" on all claims for mental impairment benefits. Colorado Legislative Council Tape, Conference Committee Hearing on S.B. 218, May 4, 1991. The ICAP's interpretation runs contrary to that intent and purpose, and as a consequence, renders the statute ineffective in accomplishing its purpose as to claims for temporary benefits. The Court should reject such an interpretation.

Second, in construing a statute, a construction that strains to give language a meaning other than its plain meaning should not be chosen. Colorado Department of Social Services v. Board of County Commissioners, 697 P.2d 1 (Colo. 1985). Here, the ICAP chose "exclusive" as the meaning for the word "inclusive." Such a strained construction should be rejected.

Finally, the occasion and necessity of a statute, and the mischief to be remedied by it, should be considered in its construction. National Surety Co. v. Schafer, 57 Colo. 56, 140 P.

199 (Colo. 1914). Legislators adopted C.R.S. §8-41-301(2)(b) because they perceived that work-related stress could become an increasing problem area for claims and litigation. Colorado Legislative Council Tape, Conference Committee Hearing on S.B. 218, May 4, 1991. They chose to remedy this perceived problem by imposing "limitations of twelve weeks of coverage." Id. The ICAP's construction disregards both the problem and the solution identified by the legislature.

CONCLUSION

Based on the foregoing, CML and CWCP respectfully urge the Court to reverse the ICAP's order.

Respectfully submitted this 2nd day of April, 1993.

Tami A. Tanoue, No. 12952
GRIFFITHS & TANOUE, P.C.
1860 Blake Street, Suite 550
Denver, CO 80202
(303) 298-1601

Geoffrey T. Wilson, No. 11574
1600 Lincoln Street, Suite 2100
Denver, CO 80204
(303)831-6411

By: Tami A. Tanoue
Tami A. Tanoue

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing "**OPENING BRIEF OF COLORADO MUNICIPAL LEAGUE AND COUNTY WORKERS' COMPENSATION POOL AS AMICI CURIAE**" was placed in the U.S. mail, first class postage prepaid, this 2nd day of April, 1993, addressed to:

Anne Smith Myers, Esq.
Watson, Nathan & Bremer, P.C.
3900 East Mexico, Suite 1000
Denver, CO 80210

Dennis E. Valentine, Esq.
Brauer, Buescher, Valentine,
Goldhammer & Kelman, P.C.
1563 Gaylord Street
Denver, CO 80206

Attorney General's Office
1525 Sherman Street, Third Floor
Denver, CO 80203

Industrial Claim Appeals Office
1120 Lincoln Street, Suite 704
Denver, CO 80203

Lynne G. Benjamin

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