IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

DAVID LAWHORN,	)	
	)	
Appellant, Employee below	)	
	)	
v.	)	C.A. No. 05A-06-007-JRS
	)	
NEW CASTLE COUNTY,	)	
	)	
Appellee, Employer below.	)	
	)	

Date Submitted: January 18, 2006
Date Decided: May 1, 2006

Upon Appeal from the Industrial Accident Board.
AFFIRMED.

ORDER

This 1st day of May, 2006, upon consideration of the appeal of David Lawhorn from the decision of the Industrial Accident Board granting New Castle County's Motion to Dismiss the Petition for Additional Compensation,[1] it appears to the Court that:

1. On February 9, 1995, David Lawhorn ("Lawhorn") sustained a compensable injury to his low back while working for his employer, New Castle

[1]Docket Item ("D.I.") 3, Order, at 7.

County ("the County"). Subsequent to filing a workers' compensation claim, he received medical and indemnity payments for the injury. Lawhorn signed "receipts for payment of benefits" on August 24, 1995 and November 11, 1996. The receipts stated that the "claimant has the right within five years after the date of the last payment to petition the Industrial Accident Board for additional compensation." The last payment arising from the February 1995 injury was made directly to Lawhorn's treating physician, Dr. Frank Falco, on April 28, 1999. Lawhorn apparently was unaware of this payment at the time it was transmitted by the County.[2]

2. After the last payment, Lawhorn continued to receive treatment for his injury believing that his medical expenses were still being paid by the County pursuant to his 1995 claim for benefits. He did not learn of the "last payment" to Dr. Falco until five years later, in October 2004, when one of his treating doctors, Dr. Bruce Rudin, attempted to submit a bill for payment to the County and, in response, was advised that no further bills would be paid under Lawhorn's 1995 claim because the statute of limitations had expired.[3]

---

[2]D.I. 3, Tr. of Hr'g, at 5, 17; D.I. 7 at 3; D.I. 9 at 11, Ex. B.

[3]D.I. 7 at 3. While Lawhorn alleges that he continued to receive medical treatment after final payment was made in 1999, the County submits that it received no medical invoices on Lawhorn's behalf from April 1999 until it received Dr. Rudin's invoice in October 2004. *See* D.I. 9 at 6.

3. On November 5, 2004, Lawhorn filed a Petition to Determine Compensation Due. He subsequently filed a Petition to Determine Additional Compensation Due on March 24, 2005. Both petitions sought ongoing disability benefits for a low back injury that was either a recurrence of his original injury from 1995 or a new injury caused by an "accident" in July 2004.[4]

4. On June 2, 2005, Lawhorn and the County appeared before the Industrial Accident Board ("the Board") on cross-motions. Lawhorn moved to consolidate his Petition for Compensation Due with his Petition for Additional Compensation Due because both petitions included "the same body parts, alleged injuries to those body parts, and medical testimony[.]"[5] The County moved to dismiss the Petition for Additional Compensation Due arguing that it had been filed beyond the post-payment statute of limitations under DEL. CODE ANN. tit. 19, § 2361(b) (2005) ("Section 2361(b)").[6]

5. On June 6, 2005, the Board granted the County's motion to dismiss and denied Lawhorn's motion to consolidate as moot. The Board determined that the

---

[4]D.I. 3, Order, at 1.

[5]*Id.*, Letter from Att'y A. Dale Bowers.

[6]*Id.*, Order, at 1. *See also* DEL. CODE ANN. tit. 19, § 2361(b): "Where payments of compensation have been made in any case under an agreement approved by the Board or by an award of the Board, no statute of limitation shall take effect until the expiration of 5 years from the time of the making of the last payment for which a proper receipt has been filed with the Department."

County complied with the applicable statutory notice provision and, as a result, Lawhorn was barred by the five year statute of limitations under Section 2361(b) from submitting requests for benefits arising out of the February 1995 accident.[7] More specifically, the Board found that the receipts Lawhorn signed in August 1995 and November 1996 were adequate to discharge the County's duty pursuant to Section 3914 to provide "prompt and timely" notice informing Lawhorn of the five year statute of limitations under Section 2361(b). The Board also concluded that, "[a]lthough § 2361 does provide that the five year period begins to run from the date of the 'last payment for which a proper receipt has been filed,' we conclude that the absence of such a receipt for the April 1999 payment does not affect our decision."[8]

6. On appeal, Lawhorn contends that the Board's finding that the statute of limitations barred his Petition for Additional Compensation Due was not based on substantial evidence and reflected an improper application of the statute of limitations. He argues that the evidentiary record did not support the Board's holding

---

[7]"An insurer shall be required during the pendency of any claim received pursuant to a casualty insurance policy to give prompt and timely written notice to claimant informing claimant of the applicable state statute of limitations regarding action for his/her damages." DEL. CODE ANN. tit. 18, § 3914 (1999) ("Section 3914")

[8]D.I. 3, Order, at 6-7. The Board confirmed that no "receipt" existed for the final payment: "At the hearing Claimant observed that there was no receipt signed or filed for the April 28, 1999 payment to Dr. Falco. Both the testimony during the hearing and the Board's files confirm this." *Id.*

that the receipts for payment signed by him in August 1995 and November 1996, constituted "prompt and timely" notice[9] to Lawhorn of the applicable five year statute of limitations.[10] Lawhorn further submits that the Board erred as a matter of law and fact in holding that the absence of a receipt or notice of the final payment in April 1999 did not affect the determination of whether Lawhorn received "prompt and timely" notice of the statute of limitations.[11]

7. This Court has repeatedly emphasized the limited extent of its appellate review of the Board's factual findings. The Court's review is confined to determining whether there is "substantial evidence" to support an agency's factual findings.[12] Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[13] It is "more than a scintilla but less than a preponderance of the evidence."[14] The "substantial evidence" standard of review contemplates a significant degree of deference to the Board's factual conclusions and

---

[9] *See* Section 3914.

[10] *See* Section 2361(b).

[11] *See* D.I. 7.

[12] *Canyon Const. v. Williams*, 2003 WL 1387137, at *1 (Del. Super. Ct. Mar. 5, 2003).

[13] *Breeding v. Contractors-One, Inc.*, 549 A.2d 1102, 1104 (Del. 1998).

[14] *Id.*

its application of those conclusions to the appropriate legal standards.[15] In its review, "the Court will consider the record in the light most favorable to the prevailing party below."[16]

8. The Court must also ensure that the Board made no errors of law.[17] Questions of law that arise from the Board's decision are subject to *de novo* review which requires the Court to determine whether the Board erred in formulating or applying legal precepts.[18] The Board's interpretation of a statutory requirement, which appears to have occurred in this case, constitutes a ruling of law and is subject to *de novo* review.[19]

9. "'Statutes must be read as a whole and all the words must be given effect'" before a court can determine whether to engage in statutory construction.[20] "Only where a statute is ambiguous and its meaning cannot be clearly ascertained

---

[15]*Hall v. Rollins Leasing*, 1996 WL 659476, at *2 (Del. Super. Ct. Oct. 4, 1996) (citing DEL. CODE ANN. tit. 29, § 10142(d)).

[16]*General Motors Corp. v. Guy*, 1991 WL 190491, at *3 (Del. Super. Ct. Aug. 16, 1991).

[17]*See Hall*, 1996 WL 659476, at *2-3.

[18]*See Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154, 156 (Del. 1998); *Hudson v. State Farm Mut. Ins. Co.*, 569 A.2d 1168, 1170 (Del. 1990).

[19]*Vance v. Irwin,* 619 A.2d 1163, 1164 (Del. 1993) (interpreting Section 3914).

[20]*Rosenthalis v. Doctors for Emergency Servs., P.A.*, 2004 WL 692686, at *3 (Del. Super. Ct. Mar. 31, 2004) (citation omitted).

does a court engage in the process of statutory construction and interpretation."[21] If, however, "a statute is unambiguous, there is no need for judicial interpretation, and the plain meaning of the statutory language controls."[22]

10. A statute is "ambiguous when it is reasonably susceptible of different conclusions or interpretations."[23] Ambiguity also exists "if a literal reading of the statute would lead to an unreasonable or absurd result not contemplated by the legislature."[24] "If a statute is ambiguous, it should be construed in a way that will promote its apparent purpose and harmonize [it] with other statutes."[25] Such an interpretation would align the statute with the goal of statutory construction - "to ... give effect to legislative intent."[26]

11. When interpreting the provisions of Delaware's Workers' Compensation Act,[27] it is well settled that they "are to be liberally construed to effectuate the

---

[21] *Newtowne Vill. Servs. Corp. v. Newtowne Rd.*, 772 A.2d 172, 176 (Del. 2001).

[22] *Eliason v. Englehart*, 733 A.2d 944, 946 (Del. 1999). *See also Cantinca v. Fontana*, 884 A.2d 468, 471 (Del. 2005) ("This Court has held that in construing a statute, the plain meaning of the statutory language controls.").

[23] *Newtowne*, 884 A.2d at 176.

[24] *Id.*

[25] *Eliason*, 733 A.2d at 946.

[26] *Id.*

[27] DEL. CODE ANN. tit. 19, §§ 2301-2397 (2005).

statute's intended goal of compensation to the injured employee."[28] Indeed, the "'liberal interpretation is used to resolve any reasonable doubts in favor of the worker because it was for the workers' benefit that the act was passed.'"[29]

A. DEL. CODE ANN. tit. 19, § 2361(b)

12. Section 2361(b) provides:

> Where payments of compensation have been made in any case under an agreement approved by the Board or by an award of the Board, no statute of limitation shall take effect until the expiration of 5 years from the time of the making of the last payment for which a proper receipt has been filed with the Department [of Labor].[30]

Applying the principles of statutory construction to this provision, it appears that Section 2361(b) speaks in plain and unambiguous terms. A literal reading provides that the statute of limitations does *not* begin to take effect until *after* a "last payment" is made *and* a "proper receipt" is filed with the Department. The provision is ambiguous, however, in the sense that a literal reading would, at times, "lead to an

---

[28] *Johnson Controls, Inc. v. Fields*, 758 A.2d 506, 509 (Del. 2000). *See also Hirneisen v. Champlain Cable Corp.*, 892 A.2d 1056, 1059 (Del. 2006) ("This Court has recognized that Delaware courts are to interpret the Delaware Workers' Compensation Act liberally so as to effectuate its remedial purpose.").

[29] *Hirneisen*, 892 A.2d at 1059 (citation omitted). *See also* 3B NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 75:3, 37 (6th ed. rev. 2003) ("[A]ny reasonable doubts as to construction [of a workers' compensation provision] should be resolved in favor of including the claimant within the coverage of the statute.").

[30] DEL. CODE ANN. tit. 19, § 2361(b). *See also* DEL. CODE ANN. tit. 19, § 2301(8) ("'Department' means the Department of Labor.").

unreasonable or absurd result not contemplated by the legislature."[31] That is, if a "last payment" is made *without* a "proper receipt," the point in time when the five-year period begins to run, if at all, is unclear.

13. After carefully considering the facts of this case and the provisions of Section 2361(b), the Court has concluded that the interpretation of Section 2361(b) urged by Lawhorn would lead to "an unreasonable" result.[32] The most recent payment made by the County in connection with Lawhorn's 1995 claim was on April 28, 1999. No receipt exists for this payment. The "last payment for which a proper receipt has been filed" was on November 11, 1996, when Lawhorn signed a receipt which stated that the "claimant has the right within five years after the date of the last payment to petition the Industrial Accident Board for additional compensation." Under a literal reading of Section 2361(b), the five year limitations period would start to run as of November 11, 1996, since that was the last payment accompanied by a receipt. If the Court accepts the April 1999 payment to Dr. Falco as the "last payment," even though no "receipt" was filed with that payment, then the five year limitations period would begin on that date. In either event, the applicable statute of limitations would have expired prior to the time Dr. Rudin attempted to submit his

[31] *Newtowne*, 884 A.2d at 176.

[32] *Id.*

bill in October 2004.[33] The only way Lawhorn can prevail here is if the Court holds that the failure to file a receipt with the 1999 payment somehow indefinitely tolled the statute of limitations, notwithstanding that in Lawhorn's mind, based on the notices he had received, the statute of limitations had already expired in 2001. To construe Section 2361(b) in a manner that affords an indefinite tolling of the statute of limitations would be contrary to the apparent intent of the Delaware General Assembly when it enacted Section 2361(b).[34] Hence, the line of Delaware cases that find it appropriate in the statute of limitations context to place primary importance on the date of the last payment, and to de-emphasize the significance of the filing of a receipt.[35] Based on this authority, and settled canons of statutory construction, the Court is satisfied that the statute of limitations in this case expired on April 28, 2004,

---

[33]If the 1996 payment is the last payment, then the statute expired in 2001. If the April 1999 payment is the last payment, then the statute expired in April 2004, six months prior to the submission of Dr. Rudin's bill.

[34]*Newtowne*, 884 A.2d at 176 (courts should interpret statutes to avoid "absurd" results); *Eliason*, 733 A.2d at 946 (courts should interpret statutes "in a way that will promote [their] apparent "purpose."). Although this argument was not directly addressed by Lawhorn, it is important to note, as the Board does, that such a decision would permit a claimant to enjoy an "open-ended period for the presentation of requests for payment." This would render any applicable statute of limitations provision moot and indirectly impede the workers' compensation statute's intended goal of compensating injured employees by making insurance carriers guess in their computations of appropriate reserves. There being no support in the case law for the indefinite tolling of the statute of limitations until a receipt has been filed for the last payment, the Court finds it appropriate that, pursuant to Section 2361(b), the "statute of limitation shall take effect ... 5 years from the time of the making of the last payment[,]" regardless of whether a receipt has been filed.

[35]*See e.g. Phillips v. Am. Cancer Soc'y*, 1986 WL 5843, at *3 (Del. Super. Ct. May 14, 1986) ("The Court is cognizant of the line of cases in this jurisdiction which deemphasize the significance of the date of filing the receipt, and instead place primary importance on the date of the last payment.").

five years after the date of the last payment and approximately six months prior to the submission of Dr. Rudin's bill for services.[36]

14. The Court's holding here is consistent with the Supreme Court's holdings in *Catalytic Construction Co. v. Balma*[37] and *Hopkins v. Evans.*[38] In *Balma*, the claimant was paid disability benefits on May 5, 1966. A receipt evidencing that payment was filed with the Board. On August 21, 1968, the Board ordered the employer's carrier to pay a hospital bill incurred by the claimant under his original claim. No receipt was filed. When the claimant filed a petition with the Board in 1972 seeking review of the original compensation agreement, the employer argued that the claim was barred as of 1971 because no receipt had been filed with the 1968 payment and, therefore, the statute was not tolled at that time. The Supreme Court disagreed and affirmed the Board's rejection of the statute of limitations defense. The Court held that the employer could not rely upon the receipt provision as the "statute does not specify situations in which a receipt is required to be filed with the Board, nor does it specify who has the duty to file it."[39] The statute of limitations was,

---

[36]The record indicates that the bill submitted by Dr. Rudin in October 2004 was for his services rendered after Lawhorn's "accident" on July 11, 2004, and not for any services rendered by him prior to the expiration of the statute in April 2004. *See* D.I. 3, Tr. of hrg., at 9, 19, 27.

[37]317 A.2d 872 (Del. 1974).

[38]575 A.2d 1172 (Del. 1990).

[39]*Balma*, 317 A.2d at 874.

therefore, triggered anew by the 1968 payment even though no receipt existed.[40]

B. DEL. CODE ANN. tit. 18, § 3914

15. Section 3914 provides:

> An insurer shall be required during the pendency of any claim received pursuant to a casualty insurance policy to give prompt and timely written notice to claimant informing claimant of the applicable state statute of limitations regarding action for his/her damages.

The stated purpose of this provision is "to put a claimant on notice of the applicable statute of limitations so that a claimant may assert their [sic] rights before the expiration of the statute of limitations."[41] This provision has also "been characterized as an 'expression of legislative will to toll otherwise applicable time limitations' with respect to claims made against insurers."[42] That is, if an insurer fails to provide "prompt and timely" notice to a claimant, the statute of limitations is tolled and the insurer is estopped from asserting a statue of limitations defense.[43] The Court has held that Section 3914 applies to workers' compensation cases.[44] As such, an insurer

---

[40] *Id. See also Evans*, 575 A.2d at 1175 ("[T]he employer can not rely on the 'proper receipt' provision. This Court has previously held that the statute does not specify situations in which a receipt is required to be filed with the Board, nor does it specify who has the duty to file the receipt.").

[41] *McMillan v. State*, 2002 WL 32054600, at *3 (Del. Super. Ct. Sept. 19, 2002)

[42] *Vance*, 619 A.2d at 1164 (citation omitted).

[43] *Lankford v. Richter*, 570 A.2d 1148, 1150 (Del. 1990); *Samoluk v. Basco, Inc.*, 528 A.2d 1203, 1204 (Del. Super. Ct. 1987).

[44] *See Fleming v. Purdue Farms, Inc.*, 2002 WL 31667335, at *2 (Del. Super. Ct. Oct. 30, 2002); *McMillan*, 2002 WL 32054600, at *2.

or self-insurer is required to furnish notice to a claimant of the applicable statute of limitations under Section 2361.[45]

16. Lawhorn contends that the receipts he signed in August 1995 and November 1996 did not provide him with "prompt and timely" notice of the five-year statute of limitations as required by Section 3914. According to Lawhorn, although his signature acknowledges that he received payment of benefits, it does not support a finding that he was provided sufficient notice of the statute of limitations because he was never made aware of the date on which the statute began to run. Lawhorn, therefore, submits that the County should be estopped from asserting a statute of limitations defense.[46] The Court disagrees.

17. "The language of section 3914 is unambiguous."[47] "When construing a statute in which the language 'is plain and conveys a clear and definite meaning, the courts will give to the statute the exact meaning conveyed by the language, adding nothing thereto, and taking nothing therefrom.'"[48] Giving Section 3914 its precise meaning as conveyed by the language, the statute requires an insurer, during the

---

[45] *See Stop & Shop Cos. v. Gonzales*, 619 A.2d 896, 898 (Del. 1993) (holding that there is no rational basis to distinguish between insurers and self-insurers under Section 3914; thus, self-insurers are also required to provide notice).

[46] D.I. 7 at 7.

[47] *McMillan*, 2002 WL 32054600, at *2; *Gonzales*, 619 A.2d at 899 ("We find no ambiguity in § 3914.").

[48] *Gonzales*, 619 A.2d at 899 (*quoting Federal United Corp. v. Havender*, 11 A.2d 331, 337 (Del. 1940)).

pendency of any claim, to provide prompt and timely written notice to a claimant informing him/her of the applicable statute of limitations. Nowhere in the statute does it require the insurer to inform the claimant of the date on which the statute begins to run. If the General Assembly intended insurers to provide notice to claimants of the date when the statute begins to run, "it would have written the law differently."[49] Given that Section 3914 "speaks in unambiguous terms, with no uncertainty to be found, the Court will not override the plain, unambiguous, language of the statute[.]"[50]

18. The County has satisfied its notice requirement and can raise a statute of limitations defense. On two occasions, August 24, 1995 and November 11, 1996, the County provided Lawhorn with written receipts which stated "claimant has the right within five years after the date of the last payment to petition the Industrial Accident Board for additional compensation." These receipts were issued during the pendency of his workers' compensation claim, were promptly and timely provided to him after he received his payment of benefits on those two dates, and adequately explained his rights. The County has, therefore, satisfied its Section 3914 notice obligation.

---

[49] *Rosenthalis*, 2004 WL 692686, at *3.

[50] *Lewis v. American Independent Ins. Co.*, 2004 WL 1426964, at * 11 (Del. Super. Ct. June 22, 2004).

19. Based on the foregoing, the decision of the Board granting NCC's Motion to Dismiss the Petition for Additional Compensation Due is **AFFIRMED**.

IT IS SO ORDERED.

_____

Judge Joseph R. Slights, III

Original to Prothonotary