

IN THE SUPREME COURT OF IOWA

CASE NO. 20-0769

AMERICAN HOME ASSURANCE,

Petitioner-Appellee,

v.

LIBERTY MUTUAL FIRE INSURANCE COMPANY,

Respondent-Appellant.

APPEAL FROM THE DISTRICT COURT
OF POLK COUNTY
HON. WILLIAM P. KELLY

APPELLANT'S FINAL BRIEF

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STATEMENT OF THE ISSUES

1. Did the district court err in reversing over 20 years of agency rulings by finding Iowa Code section 85.21 allows American Home Assurance to retroactively seek and receive contribution from Liberty Mutual Insurance for workers' compensation mistakenly paid several years after the applicable evidentiary hearing?

ROUTING STATEMENT

This case involves application of existing principles of law and should be routed to the Iowa Court of Appeals.

STATEMENT OF THE CASE

On January 12, 2017, pursuant to Iowa Code § 85.21, American Home Assurance filed a Petition for Contribution with the Iowa Commission for Workers' Compensation, against Liberty Mutual, seeking reimbursement for all previously paid benefits arising out of a June 16, 2018 workers' compensation injury. (Petition for Contribution; App. 67). On May 30, 2017, Liberty Mutual filed a motion for partial summary judgment pertaining to American Home Assurance's claim for reimbursement for payments made prior to the January 3, 2017 Order. (Liberty Mutual Motion for Summary Judgment; App. 74). On July 24, 2018, the Deputy entered a ruling denying Liberty Mutual's Motion. (Ruling on Motion for Summary Judgment; App. 76). On August 7, 2018, Liberty Mutual filed a notice of appeal. (Notice of Appeal; App. 84). On October 7, 2019, the Commissioner reversed the deputy's decision. (Commissioner Appeal Order; App. 86).

On November 4, 2019, American Home Assurance filed a petition for judicial review. (Petition for Judicial Review; App. 99). A hearing was held in the Iowa District Court on January 31, 2020. On April 20, 2020, Judge William P. Kelly reversed the Commissioner's appeal ruling and denied Liberty Mutual's Motion for Summary Judgment. (District Court Order; App. 124).

STATEMENT OF THE FACTS

On December 2, 2010, John J. Thompson filed a workers' compensation petition against Keokuk Steel Castings and American Home Assurance alleging he sustained a work injury on November 15, 2007. (Petition for Contribution; App. 20). Sometime after filing his original petition, Mr. Thompson filed an amended petition asserting an injury date of June 30, 2008. (Petition for Contribution; App. 20). American Home Assurance filed an amended answer denying the newly alleged date of injury. (Petition for Contribution; App. 20). The matter went to hearing on November 2, 2011. (Arbitration Decision; App. 28). On February 22, 2012, the Deputy entered a ruling determining that Mr. Thompson's date of injury was June 16, 2008, and that he had suffered 25% industrial disability, entitling him to a total of 125 weeks of permanent partial disability benefits at a rate of \$540.89. (Arbitration Decision; App. 33). Subsequent to being affirmed on appeal, on or before May 21, 2013, AHA paid all benefits due pursuant to the February 22, 2012 Order. (Petition for Contribution; App. 24).

On March 2, 2016, Mr. Thompson petitioned for review-reopening. (Petition for Contribution; App. 24). Subsequent to Mr. Thompson's Review-Reopening Petition, American Home Assurance discovered

information indicating that it was not the named insurer for Keokuk Steel Castings on June 16, 2008, Mr. Thompson's predetermined date of injury. (Petition for Contribution; App. 25). On December 29, 2016, American Home Assurance filed an Application and Consent Order for Payment of Benefits Under Iowa Code section 85.21. (Application and Consent Order; App. 19). On January 3, 2017, the Commission entered an 85.21 Order. (Application and Consent Order; App. 19). On January 12, 2017, pursuant to Iowa Code § 85.21, American Home Assurance filed a Petition for Contribution against Liberty Mutual seeking reimbursement for all previously paid benefits arising out of the February 22, 2012 Decision and any future benefits that become due as a result of Mr. Thompson's petition for review-reopening. (Petition for Contribution; App. 23-26).

On May 30, 2017, Liberty Mutual filed a motion for partial summary judgment regarding American Home Assurance's claim for reimbursement for payments made prior to the January 3, 2017 Order. (Liberty Mutual Motion for Summary Judgment; App. 74). On July 24, 2018, the Deputy entered a ruling on Liberty Mutual's Motion, finding that Iowa law entitled American Home Assurance to contribution/reimbursement for benefits paid prior to the January 3, 2017 Order. (Ruling on Motion for Summary

Judgment; App. 76). On August 7, 2018, Liberty Mutual filed a notice of appeal. (Notice of Appeal; App. 84).

On October 7, 2019, the Commissioner reversed the deputy's decision and found that, because American Home failed to seek an Iowa Code § 85.21 consent order prior to the arbitration hearing, Liberty Mutual is not liable for contribution to American Home Assurance for benefits ordered to be paid pursuant to the arbitration decision. (Commissioner Appeal Order; App. 98).

On November 4, 2019, American Home Assurance filed a petition for judicial review. (Petition for Judicial Review; App. 99). A hearing was held in the Iowa District Court on January 31, 2020. On April 20, 2020, Judge William P. Kelly reversed the Commissioner's appeal ruling and denied Liberty Mutual's Motion for Summary Judgment. (District Court Order; App. 142). In support of its reversal, the Court held that the language and underlying purpose of Iowa Code section 85.21 does not limit reimbursement "to only allow reimbursement proactively after arbitration, and only for those parties who were a part of the underlying arbitration." (District Court Order; App. 138).

ARGUMENT

Scope and Standard of Review

This Court reviews a ruling on a motion for summary judgment for correction of errors at law. *Spencer v. Truro Tavern, Inc.*, No. 06-1178, 2007 WL 253529, at *1 (Iowa Ct. App. Jan. 31, 2007).

Summary judgment is appropriate when “there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.” Iowa R. Civ. P. 1.981(3). “A fact is material if it will affect the outcome of the suit, given the applicable law.” *Parish v. Jumping, Inc.*, 719 N.W.2d 540, 543 (Iowa 2006). “An issue of fact is ‘genuine’ if the evidence is such that a reasonable finder of fact could return a verdict or decision for the nonmoving party.” *Id.* (citing *Junkins v. Branstad*, 421 N.W.2d 130, 132 (Iowa 1988)). The burden is on the party moving for summary judgment to prove the facts are undisputed. *Zaber v. City of Dubuque*, 789 N.W.2d 634, 636 (Iowa 2010). A moving party “may establish a right to summary judgment by establishing the limits of the other parties’ proof.” *Wilson v. Darr*, 553 N.W.2d 579, 582 (Iowa 1996). “If those limits reveal that the resisting party has no evidence to factually support an outcome determinative element of that party’s claim, the moving party will prevail on summary judgment.” *Id.* The court looks at the

pleadings, depositions, interrogatory answers, admissions, and any affidavits to evaluate if an issue of material fact exists. *Torrence v. Murphy's Bar & Grill, Inc.*, No. 15-0326, 2016 WL 1680470, at *1 (Iowa Ct. App. Apr. 27, 2016).

The court views the record “in the light most favorable to the nonmoving party.” *Bass v. J.C. Penney Co.*, 880 N.W.2d 751, 755 (Iowa 2016). In reviewing the facts in the light most favorable to the resisting party, the court affords that party “all reasonable inferences that the record will bear.” *Smith v. Shagnasty's Inc.*, 688 N.W.2d 67, 71 (Iowa 2004). The court should “indulge in every legitimate inference that the evidence will bear in an effort to ascertain the existence of a fact question.” *Id.* An inference is “legitimate” if it is “rational, reasonable, and otherwise permissible under the governing substantive law.” *Id.* (quoting *McIlravy v. N. River Ins. Co.*, 653 N.W.2d 323, 328 (Iowa 2002)). “[A]n inference is not legitimate if it is ‘based upon speculation or conjecture.’ ” *Id.* Moreover, a plaintiff resisting a motion for summary judgment cannot rest on mere allegations in the pleadings, and must set forth “specific, material facts, supported by competent evidence” to establish the existence of a genuine issue for trial. *MGM Apartments, LLC v. Mid-Century Ins. Co.*, No. 13-0661, 2014 WL 251898, at *1 (Iowa Ct. App. Jan. 23, 2014). A genuine

issue of material fact exists “[i]f reasonable minds may differ on the resolution of an issue.” *Smith*, 688 N.W.2d at 71.

Applicable Law

As recently stated by the Iowa Supreme Court, when interpreting the language of chapter 85 of the Iowa Code, the “goal is to determine and effectuate the legislature’s intent. To determine legislative intent, we look to the language chosen by the legislature and not what the legislature might have said. Absent a statutory definition, we consider statutory terms in the context in which they appear and give each its ordinary and common meaning.” *JBS Swift & Co. v. Ochoa*, 888 N.W.2d 887, 896 (Iowa 2016). A statute is ambiguous “if reasonable minds could differ or be uncertain as to the meaning of a statute.” *State v. Lopez*, 907 N.W.2d 112, 116 (Iowa 2018). If the language of chapter 85 is ambiguous, the legislature intent is determined by applying the following factors:

1. The object sought to be attained.
2. The circumstances under which the statute was enacted.
3. The legislative history.
4. The common law or former statutory provisions, including laws upon the same or similar subjects.
5. The consequences of a particular construction.

6. The administrative construction of the statute.

7. The preamble or statement of policy.

Iowa Code § 4.6 (2015).

I. THE LANGUAGE OF IOWA CODE SECTION 85.21 IS AMBIGUOUS

Iowa Code section 85.21 provides, in relevant part:

1. The workers' compensation commissioner may order any number or combination of alleged workers' compensation insurance carriers and alleged employers, which are parties to a contested case or to a dispute which could culminate in a contested case, to pay all or part of the benefits due to an employee or an employee's dependent or legal representative if any of the carriers or employers agree, or the commissioner determines after an evidentiary hearing, that one or more of the carriers or employers is liable to the employee or to the employee's dependent or legal representative for benefits under this chapter or under chapter 85A or 85B, but the carriers or employers cannot agree, or the commissioner has not determined which carriers or employers are liable.

3. When liability is finally determined by the workers' compensation commissioner, the commissioner shall order the carriers or employers liable to the employee or to the employee's dependent or legal representative to reimburse the carriers or employers which are not liable but were required to pay benefits. Benefits paid or reimbursed pursuant to an order authorized by this section do not require the filing of a memorandum of agreement. However, a contested case for benefits under this chapter or under chapter 85A or 85B shall not be maintained against a party to a case or dispute resulting in an order authorized by this section unless the contested case is commenced within three years from the date of the last benefit payment under the order. The commissioner may

determine liability for the payment of workers' compensation benefits under this section.

Iowa Code § 85.21.

As articulated by the Iowa Workers' Compensation Commission over 20 years ago, the ordinary and common meaning of the aforementioned language suggests it is "intended to be prospective in nature." *Employers Mutual Casualty Companies v. Van Wynqarden & Abrahamson*. File Nos. 1059572, 1059573, 1059574, 1011165 (App. June 30, 1998).

The entire scheme is set up to allow an employer to seek an order prior to payment of benefits, and only when liability is finally determined, to seek contribution for benefits that employer was "required to pay" under the order. It would require an extremely strained reading of the statute to allow one employer to pay all benefits due, enter or not enter into an agreement for settlement as the case may be, and only then bring in a former or subsequent employer in an effort to obtain contribution. Note also that an action against a party must be commenced within three days from the date of the last benefit payment under the order.

Id.

Pursuant to the aforementioned analysis, the Commission has consistently held that a failure to seek an order under Iowa Code section 85.21 prior to an evidentiary hearing is a bar to retroactive reimbursement. *See Arreola v. Bodeans Baking Group Holding*. File Nos. 5040956, 5040974 (App. Feb. 16, 2018); *see also Dakota Truck Underwriters v. Continental Western Ins.*. File Nos. 5028722, 5028738 (App. Sept. 28, 2011); *Hysell v. Golden Age*

Care Ctr., File Nos. 1075022, 1042236, 987874 (App. Oct. 19, 1999); *Cambridge Integrated v. Fareway Stores, Inc.*, File No. 1292163 (Arb. Dec. 21, 2001); *Virginia Surety Co., Inc. v. Kiowa Corp.*, File No. 1195075 (Arb. April 22, 1999). Moreover, the Iowa Supreme Court has since corroborated this analysis by stating Iowa Code section 85.21 was designed to “encourage the voluntary payment of benefits to the employee **while the case is pending**.” Quoting *Second Injury Fund of Iowa v. Bergeson*, 526 N.W.2d 543, 549 (Iowa 1995) (emphasis added); see also *Bridge v. Karr Tuckpointing Co.*, File No. 5010244 (App. Aug. 13, 2007).

For reasons articulated in its order, notwithstanding the Commission’s 20 years of consistent interpretation, the District Court has now determined the Commission misinterpreted the language of the statute and that it does not place a time constraint on seeking contribution under Iowa Code section 85.21. Given the contradictory interpretations of the applicable language, it is clear reasonable minds have differed on the meaning of Iowa Code section 85.21. As a result, the statute is by definition ambiguous and the Court should look to the factors outlined in Iowa Code § 4.6. *State v. Lopez*, 907 N.W.2d 112, 116 (Iowa 2018).

II. THE LEGISLATURE DID NOT INTEND FOR IOWA CODE SECTION 85.21 TO ALLOW INSURANCE COMPANIES TO RETROACTIVELY SEEK AND RECEIVE REIMBURSEMENT FOR BENEFITS PAID

In considering the factors outlined in Iowa Code § 4.6, it is clear Iowa Code section 85.21 was strictly intended to require a party to seek reimbursement prior to an evidentiary hearing. As stated by the Iowa Supreme Court, the object sought to be attained by Iowa Code section 85.21 was to “encourage the voluntary payment of benefits to the employee **while the case is pending**.” *Quoting Second Injury Fund of Iowa v. Bergeson*, 526 N.W.2d 543, 549 (Iowa 1995) (emphasis added); *see also Bridge v. Karr Tuckpointing Co.*, File No. 5010244 (App. Aug. 13, 2007). In other words, the legislature understood the fact that if two insurance carriers are fighting over liability, claimants would be left without recourse until the dispute is reconciled, defeating the purpose of the Iowa Workers’ Compensation Statute (*i.e.* offering injured workers’ an “efficient and speedy tribunal to determine and award compensation.” *Zomer v. West River Farms*, 666 N.W.2d 130, 133 (Iowa 2003)). As correctly noted in the Commissioner’s Appeal Decision, the legislature’s intent was not to afford insurance companies an opportunity to retroactively correct self-inflicted error, which is precisely what American Home Assurance is attempting to do in this case.

In addition, the aforementioned interpretation/rule requiring a party to seek reimbursement prior to an evidentiary hearing has been in place for over 20 years. *See e.g. Arreola v. Bodeans Baking Group Holding*. File Nos. 5040956, 5040974 (App. Feb. 16, 2018). The Commission has never interpreted the statute to allow reimbursement in the manner American Home Assurance now seeks. As stated by the Iowa Supreme Court, “interpretation by an agency charged with implementation of statute, particularly over a long period of time and without legislative intervention, is evidence of compatibility of the agency’s interpretation with the legislative intent.” *Churchill Truck Lines, Inc. v. Transportation Reg. Bd. of Iowa Dept. of Transp.*, 274 N.W.2d 295, 298 (Iowa 1979); *see also State v. Stand. Oil Co. of Indiana*, 271 N.W. 185, 188 (Iowa 1937) (“great weight should be given to the construction placed upon statutes by those charged with their administration has been frequently announced by this court, and the long settled practice or custom adopted by the executive department will not be disturbed if the statute is ambiguous and reasonably susceptible to the construction adopted by the executive department.”)

Moreover, following the District Court’s erroneous interpretation of Iowa Code section 85.21 would birth unintended consequences. There are

compelling policy reasons to require a party to seek reimbursement prior to an evidentiary hearing. Specifically,

[l]itigation can be expected to proceed much more expeditiously where, as the statute contemplates, relief under section 85.21 is sought in advance, and all parties are subsequently well aware that potential contribution is an issue. Typically, it may well be expected that litigation or settlement will involve all interested parties, rather than proceeding in a piecemeal fashion as here. Under the construction urged by Siouxpreme and St. Paul, no employer or insurance company will ever be able to make voluntary payment of benefits without fear that litigation may later ensue if claimant suffers a subsequent injury (or claims to have) in different employment.

Van Dyk. File Nos. 1021846, 1030780 (Contribution Dec., Feb. 1995).

Therefore, in light of the statute's purpose, the Iowa Supreme Court's interpretation of the statute, the Commission's long-established precedent/interpretation of the statute, and the public policy considerations, it is clear that Iowa Code section 85.21 was strictly intended to require a party to seek reimbursement prior to an evidentiary hearing.

CONCLUSION

The District Court was incorrect in its interpretation of Iowa Code section 85.21. Specifically, Iowa Code section 85.21 was not intended to allow a party to retroactively seek reimbursement subsequent to an evidentiary hearing. As a result, the District Court's order should be reversed

and judgement should be entered in favor of Liberty Mutual Insurance Company.

REQUEST FOR ORAL SUBMISSION

Liberty Mutual Insurance Company requests oral submission of this case to the Court.

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on October 22, 2020, I electronically filed the foregoing Appellee's Final Brief with the Clerk of the Supreme Court by using the Iowa Electronic Document Management System (EDMS), which will send notice of electronic filing to the following:

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Per Rules 6.106(1) and 6.701, this constitutes service for purposes of the Iowa Court Rules.

/s/ Benjamin T. Erickson
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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 2937 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Word 2013 in Times New Roman 14 pt.

Dated: October 22, 2020

/s/ Benjamin T. Erickson

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