

IN THE SUPREME COURT OF THE STATE OF IOWA

CASE NO. 20-0769

AMERICAN HOME ASSURANCE,

Petitioner-Appellee,

v.

LIBERTY MUTUAL FIRE INSURANCE COMPANY,

Respondent-Appellant.

DECISION OF IOWA COURT OF APPEALS

FILED JULY 21, 2021

RESISTANCE TO
AMERICAN HOME ASSURANCE'S APPLICATION FOR FURTHER
REVIEW

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STATEMENT IN RESISTANCE OF FURTHER REVIEW

American Home Assurance's Application for Further Review does not implicate any of the grounds upon which this Court traditionally grants further review. *See* Iowa R. App. P. 6.1103(1). Rather, the Application asks the Supreme Court to reverse the decision of the Court of Appeals without support of any of the enumerated grounds within the Rule 6.1103(1).

The Court of Appeals decision is not in conflict with a previous decision of the Iowa Supreme Court or Iowa Court of Appeals. As correctly noted by the District Court, there are no Iowa Supreme Court or Iowa Court of Appeals decisions addressing this issue. (District Court Order; app. 139-140). Moreover, this case does not deal with substantial question of constitutional law or important unsettled area of law. As The Iowa Court of Appeals decision notes, the Commissioner has filed a "host of adjudicative decisions over more than two decades construing and applying section 85.21." The Court of Appeal's decision is consistent with the aforementioned adjudicative decisions.

American Home Assurance's Application for Further Review should be denied.

BRIEF IN RESISTANCE OF FURTHER REVIEW

I. THE COURT OF APPEALS DID NOT MIS-INTERPRET IOWA CODE SECTION 85.21

As correctly decided by the Iowa Court of Appeals, the plain language of Iowa Code § 85.21 requires a party to seek reimbursement prior to the injured workers' evidentiary hearing.

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 years from the date of the last benefit payment under the order.

Quoting Employers Mutual Casualty Companies v. Van Wynqarden & Abrahamson. File Nos.1059572, 1059573, 1059574, 1011165 (App. June 30, 1998).

Pursuant to the aforementioned analysis, for over 20 years, the Commission has consistently held that a failure to seek an order under Iowa Code § 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). “[I]nterpretation 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.”)

II. THE COURT OF APPEALS DID NOT MIS-APPLY AGENCY LAW

As articulated by the Iowa Workers’ Compensation Commission over 20 years ago, the ordinary and common meaning of Iowa Code § 85.21 illustrates 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). Subsequent to the *Van Wynqarden* analysis quoted above, the Commissioner concluded:

Where a petitioner for reimbursement has sought an order pursuant to Iowa Code section 85.21 prior to the evidentiary hearing, reimbursement may include payments made both before and after the order was issued. But where no order under 85.21 issues before the evidentiary hearing in a case, reimbursement will not be ordered.

Id.

Read in the proper context, the “evidentiary hearing” referenced in the aforementioned conclusion clearly refers to the hearing between the employer/carrier and claimant at issue, not an 85.21 hearing between insurance carriers as American Home Assurance suggests. The alternative conclusion is nonsensical and inconsistent with the reasoning for the agency’s conclusion.¹

CONCLUSION

In compliance with over 20 years of Iowa Workers’ Compensation Commission precedent, the Iowa Court of Appeals correctly found that Iowa Code § 85.21 does not permit American Home Assurance to retroactively seek reimbursement subsequent to the evidentiary hearing. The Court of Appeals decision reversing the District Court’s ruling is consistent with the

¹ Indeed, in its appeal order, the District Court acknowledged the fact that its ruling was “contrary” to Commission precedent. (District Court Order; app.140).

plain language of the statute and the applicable precedent. No issue of unsettled substantive or changing law or issue of broad public importance is presented by the Application for Further Review. Therefore, the Application should be denied.

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on August 19, 2021, I electronically filed the foregoing Respondent-Appellant's Resistance to the Application for Further Review 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:

Aaron Oliver
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ATTORNEY FOR APPELLEE

Per Iowa Rules of Appellate Procedure 6.1103 and 6.701 and Iowa Rule of Electronic Procedure 16.315, this constitutes service for purposes of the Iowa Court Rules.

/s/ Benjamin T. Erickson
Benjamin T. Erickson
Attorney for Respondent-Appellant

CERTIFICATE OF COMPLIANCE

This resistance complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(4) because:

this resistance has been prepared in a proportionally spaced typeface using Word 2013 in Times New Roman 14 pt. and contains 880 words, excluding the parts of the resistance exempted by Iowa R. App. P. 6.1103(4)(a), or

this resistance has been prepared in a monospaced typeface using [state name of typeface] in [state font size] and contains [state the number of] lines of text, excluding the parts of the resistance exempted by Iowa R. App. P. 6.1103(4)(a).

Dated: August 19, 2021

/s/ Benjamin T. Erickson
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