

SUPREME COURT OF NEBRASKA

Kimminau v. Uribe Refuse Service and EMC Insurance Company

Kimminau v. Uribe Refuse Serv. & EMC Ins. Co., 270 Neb. 682 (2005) · No. S-05-012 · Decided December 2, 2005

SUMMARY

The Nebraska Supreme Court held that the Workers' Compensation Court was authorized under Neb. Rev. Stat. § 48-120(8) to order an employer to directly reimburse a health insurance carrier for medical expenses paid on behalf of a workers' compensation claimant. The court disapproved Dawes v. Wittrock Sandblasting & Painting to the extent it conflicted with the statute, reversed the review panel's decision, and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Gerrard, J.; Hendry, C.J.; Wright, J.; Connolly, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	December 2, 2005
DOCKET	S-05-012
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a Workers' Compensation Court review panel; the Nebraska Supreme Court granted the claimant's petition to bypass the Nebraska Court of Appeals.
STANDARD OF REVIEW	Under Neb. Rev. Stat. § 48-185, the appellate court may modify, reverse, or set aside a Workers' Compensation Court decision only if the court acted without or in excess of its powers, the judgment was procured by fraud, sufficient competent evidence does not support the order, or the factual findings do not support the order or award.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Nebraska
PARTIES	Darrel Kimminau v. Uribe Refuse Service, EMC Insurance Company, its workers' compensation insurance carrier

TOPICS

workers compensation

insurance

statutory interpretation

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the Nebraska Workers' Compensation Court had authority under Neb. Rev. Stat. § 48-120(8) to order an employer to directly reimburse a health insurance carrier for medical expenses paid for a workers' compensation claimant's compensable injury.
2. Whether *Dawes v. Wittrock Sandblasting & Painting* controlled despite the express reimbursement language of § 48-120(8).

HOLDINGS

1. Neb. Rev. Stat. § 48-120(8) authorizes and requires the Workers' Compensation Court to order an employer to directly reimburse a medical insurer or other payor for reasonable medical, surgical, and hospital services supplied to a workers' compensation claimant under § 48-120, even though the court lacks jurisdiction to resolve every contractual dispute involving a third-party insurer.

KEY QUOTATIONS

“The plain language of § 48-120(8), while not affording the Workers' Compensation Court with jurisdiction to resolve every disagreement that may arise with respect to the rights and obligations of a third-party insurer, does clearly provide that the Workers' Compensation Court shall order an employer to directly reimburse medical care providers and medical insurers for the reasonable medical, surgical, and hospital services supplied to a workers' compensation claimant pursuant to § 48-120.”

“Dawes v. Wittrock Sandblasting & Painting, 266 Neb. 526, 667 N.W.2d 167 (2003), is disapproved to the extent that its holding conflicts with the express provisions of § 48-120(8).”

FACTUAL BACKGROUND

Darrel Kimminau worked as a garbage hauler for Uribe Refuse Service for approximately 10 years before suffering a repetitive-trauma injury to his left shoulder, resulting in a 20-percent impairment to his left upper extremity. The Workers' Compensation Court ordered payment of medical expenses and future medical care. Kimminau's health insurance carrier had paid medical expenses related to the injury, and Kimminau sought an order requiring Uribe to reimburse the carrier directly.

PROCEDURAL HISTORY

A single judge of the Workers' Compensation Court ordered Uribe to pay medical expenses for Kimminau's compensable repetitive-trauma injury but declined to order direct reimbursement to Kimminau's health insurance carrier. The review panel affirmed. The Nebraska Supreme Court reversed and remanded after concluding that the lower court had improperly relied on *Dawes v. Wittrock Sandblasting & Painting*.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded to the Workers' Compensation Court for further proceedings consistent with the opinion and pursuant to Neb. Rev. Stat. § 48-120(8), including consideration of direct reimbursement to the health insurance carrier.

CASES CITED

- Dawes v. Wittrock Sandblasting & Painting, 266 Neb. 526, 667 N.W.2d 167 (2003)
- Rauscher v. City of Lincoln, 269 Neb. 267, 691 N.W.2d 844 (2005)
- Vega v. Iowa Beef Processors, ante p. 255, 699 N.W.2d 407 (2005)

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