

APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, FIRST DIVISION

Vandygriff v. Commonwealth Edison Co., 68 Ill. App. 3d 396

386 N.E.2d 318 (Ill. App. Ct. 1979) · No. No. 78-152 · Decided January 8, 1979

SUMMARY

The Illinois Appellate Court held that, under section 5(b) of the Illinois Workmen's Compensation Act, an employer's reimbursement-related attorney fee is limited to 25% of the total third-party settlement absent an agreement with the employer. The court reversed and remanded the order concerning attorney fees and the employer's credit for future compensation payments, directing that the credit be calculated using 25% of the \$260,000 settlement.

CASE DETAILS

COURT	Appellate Court of Illinois, First District, First Division
WRITING FOR THE COURT	O'Connor; Goldberg; McGloon
JURISDICTION	Illinois
DECIDED	January 8, 1979
DOCKET	No. 78-152
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	After Vandygriff settled his personal-injury action against Commonwealth Edison for \$260,000, his employer, Gust K. Newberg Construction Co., intervened to protect its reimbursement rights for workers' compensation benefits. The circuit court entered an order addressing the employer's lien, attorney fees, and credits for future workers' compensation payments. Newberg appealed the attorney-fee calculation and the amount of its future-payment credit.
PRECEDENTIAL VALUE	Published Illinois Appellate Court opinion; precedential under the law applicable at the time of decision.
PARTIES	Gust K. Newberg Construction Co. v. Melvin Vandygriff

TOPICS

- workers compensation
- remedies
- statutory interpretation
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the attorney fees payable from the employer's reimbursement under section 5(b) of the Illinois Workmen's Compensation Act are limited to the statutory 25 percent fee or may be calculated under the employee's 40 percent fee agreement.
2. Whether the statutory 25 percent attorney fee must be calculated on the entire \$260,000 third-party settlement or only on the amount of workers' compensation benefits already paid and reimbursed to the employer.
3. Whether Newberg's credit for future permanent-total-disability and medical payments should be calculated using the corrected settlement deductions and capped at \$176,323.84.

HOLDINGS

1. Where an employer is reimbursed from a third-party recovery under section 5(b) of the Illinois Workmen's Compensation Act, the employer's obligation to pay the employee's attorney is limited to the statutory 25 percent fee absent an agreement between the employer and the employee or the employee's attorney. The employee's 40 percent fee agreement does not control.
2. The statutory 25 percent attorney fee must be calculated on the entire third-party settlement, here \$260,000, rather than on the settlement reduced by workers' compensation benefits already paid.
3. Newberg was entitled to a credit for future permanent-total-disability and medical payments, but the credit was to be capped at \$176,323.84 after deducting the workers' compensation benefits already paid, costs, and the statutory attorney fee from the \$260,000 settlement.

KEY QUOTATIONS

“Newberg contends that plaintiff's attorneys are limited to the 25% fee provided for in the Workmen's Compensation Act (Ill. Rev. Stat. 1977, ch. 48, par. 138.5(b)). We agree.” (68 Ill. App. 3d at 397)

“Clearly, in the present case the plaintiff's attorneys' fees for obtaining reimbursement for Newberg must be based on the 25% statutory fee and not the plaintiff's contract with his attorneys.” (68 Ill. App. 3d at 398)

“We conclude that plaintiff's attorneys' fees should be computed at 25% of the \$260,000 total settlement.” (68 Ill. App. 3d at 399)

FACTUAL BACKGROUND

Vandygriff was injured while employed by Gust K. Newberg Construction Co. at a Commonwealth Edison construction site. He sued Edison and agreed to settle the action for \$260,000. Newberg had paid workers' compensation benefits and intervened to obtain reimbursement and protect its statutory lien and credit rights. The circuit court applied a 40 percent attorney-fee rate under Vandygriff's fee agreement and calculated a \$137,323.84 credit for future workers' compensation payments.

PROCEDURAL HISTORY

Vandygriff sued Commonwealth Edison for injuries sustained while working for Newberg at Edison's construction site. After Edison and Vandygriff agreed to a \$260,000 settlement, Newberg intervened. The circuit court ordered reimbursement of Newberg's lien, used a 40 percent attorney-fee rate, and limited Newberg's credit for future payments to \$137,323.84. The Illinois Appellate Court reversed those portions and remanded with directions.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the circuit court's order as to attorney fees and Newberg's credit. Remand for entry of an order giving Newberg credit for permanent-total-disability and future medical payments until those obligations have been paid in full, but not exceeding \$176,323.84.

CASES CITED

- Railkar v. Boll, 125 Ill. App. 2d 203, 260 N.E.2d 851 (1970)
- Kimpling v. Canty, 13 Ill. App. 3d 919, 300 N.E.2d 839 (1973)
- Hardwick v. Munsterman, 15 Ill. 2d 564, 155 N.E.2d 638 (1959)

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