

SUPREME COURT OF NEBRASKA

Boring v. Zoetis LLC

309 Neb. 270 (2021) · No. No. S-20-275 · Decided May 21, 2021

SUMMARY

The Nebraska Supreme Court affirmed the Court of Appeals' reversal and vacation of an award of waiting-time penalties and attorney fees to Martin Boring under Neb. Rev. Stat. § 48-125. The court held that the Workers' Compensation Court improperly relied solely on a judicial admission in Zoetis LLC's answer rather than evaluating the evidence presented at trial. Because the evidence supported reasonable but opposite conclusions regarding compensability and the nature and extent of Boring's injury, a reasonable controversy existed.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	May 21, 2021
DOCKET	No. S-20-275
DISPOSITION	affirmed
PROCEDURAL POSTURE	Martin Boring sought further review of the Nebraska Court of Appeals' decision reversing and vacating the Nebraska Workers' Compensation Court's award of waiting-time penalties and attorney fees. The Nebraska Supreme Court granted further review and considered only that portion of the Court of Appeals' decision.
STANDARD OF REVIEW	Under Neb. Rev. Stat. § 48-185, an appellate court may modify, reverse, or set aside a Workers' Compensation Court decision only if the compensation court acted without or in excess of its powers, the decision was procured by fraud, the record lacks sufficient competent evidence to support it, or the findings of fact do not support the order or award. Whether a reasonable controversy exists under Neb. Rev. Stat. § 48-125 is ordinarily a question of fact reviewed for clear error. When the facts are undisputed and reasonable people could not disagree about the result, the issue is one of law reviewed independently.

PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential
PARTIES	Zoetis LLC v. Martin Boring

TOPICS

workers compensation appellate procedure standard of review remedies evidence

PRACTICE AREAS

Workers' compensation Employment law Appellate procedure Remedies

QUESTIONS PRESENTED

1. Whether the Workers' Compensation Court improperly relied on a pleading admission to find that no reasonable controversy existed under Neb. Rev. Stat. § 48-125.
2. Whether the trial stipulation, conduct of the parties, and evidence superseded or relieved Zoetis from the effect of its judicial admission concerning Boring's compensable injury.
3. Whether the evidence established a reasonable controversy that precluded waiting-time penalties and attorney fees under Neb. Rev. Stat. § 48-125.

HOLDINGS

1. A judicial admission in a workers' compensation pleading does not establish the absence of a reasonable controversy when the parties subsequently try the issue by stipulation, evidence, and consent; in that circumstance, the admission is superseded or the party is relieved from its effect for purposes of determining the issues actually tried.
2. Waiting-time penalties and attorney fees are available in a Workers' Compensation Court proceeding only when there is no reasonable controversy concerning the employee's claim. A reasonable controversy exists when an unanswered legal question must be resolved to determine liability or when properly adduced evidence would support reasonable but opposite conclusions affecting allowance or rejection of the claim.
3. The Court of Appeals correctly reversed and vacated the Workers' Compensation Court's award of penalties and attorney fees, although the Nebraska Supreme Court articulated a somewhat different rationale.

KEY QUOTATIONS

“Based on a review of this record and disregarding the purported judicial admissions, could a reasonable fact finder have made the same decision—that no reasonable controversy existed?” (284)

“Applying this exercise, we believe that, as a matter of law, based on the trial record and disregarding the purported judicial admissions, a reasonable fact finder could reach only one conclusion—that a reasonable controversy existed.” (284)

FACTUAL BACKGROUND

Martin Boring, an employee of Zoetis, alleged that he suffered a work-related right upper-extremity injury on February 7, 2017. The parties stipulated to the benefits Boring would receive if the Workers' Compensation Court found that he sustained a compensable accident and injury, but they litigated compensability, causation, and the nature and extent of the injury at trial. The evidence included conflicting medical opinions and testimony concerning the injury and a possible later trip. The Workers' Compensation Court awarded benefits, penalties, and attorney fees, relying on Zoetis' pleading admission rather than determining whether the trial evidence established a reasonable controversy.

PROCEDURAL HISTORY

Boring filed a workers' compensation claim against Zoetis. The Workers' Compensation Court awarded temporary and permanent benefits, medical expenses, vocational services, penalties, and attorney fees. The Court of Appeals affirmed the benefits-related awards but reversed and vacated the penalties and attorney-fee award. The Nebraska Supreme Court affirmed the Court of Appeals' decision concerning penalties and attorney fees, while also affirming the unchallenged benefits-related portions of the judgment.

DISPOSITION

affirmed

CASES CITED

- Parks v. Hy-Vee, 307 Neb. 927, 951 N.W.2d 504 (2020)
- VanKirk v. Central Community College, 285 Neb. 231, 826 N.W.2d 277 (2013)
- Bronzynski v. Model Electric, 14 Neb. App. 355, 707 N.W.2d 46 (2005)
- Picard v. P & C Group 1, 306 Neb. 292, 945 N.W.2d 183 (2020)
- Bower v. Eaton Corp., 301 Neb. 311, 918 N.W.2d 249 (2018)
- Heesch v. Swimtastic Swim School, 20 Neb. App. 260, 823 N.W.2d 211 (2012)
- Risor v. Nebraska Boiler, 277 Neb. 679, 765 N.W.2d 170 (2009)
- Hall v. County of Lancaster, 287 Neb. 969, 846 N.W.2d 107 (2014)
- Davis v. State, 297 Neb. 955, 902 N.W.2d 165 (2017)
- Vermaas v. Heckel, 170 Neb. 321, 102 N.W.2d 647 (1960)
- Saberzadeh v. Shaw, 266 Neb. 196, 663 N.W.2d 612 (2003)
- Aboytes-Mosqueda v. LFA Inc., 306 Neb. 277, 944 N.W.2d 765 (2020)
- A.W. v. Lancaster County School District 0001, 280 Neb. 205, 784 N.W.2d 907 (2010)
- Boring v. Zoetis LLC, No. A-20-275, 2020 WL 7227304 (Neb. App. Dec. 8, 2020)

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