

SUPREME COURT OF NORTH DAKOTA

Industrial Contractors, Inc. v. Workforce Safety & Insurance, 2009
ND 157

772 N.W.2d 582 (2009) · No. No. 20080275 · Decided September 4, 2009

SUMMARY

The Supreme Court of North Dakota affirmed a district court judgment upholding Workforce Safety & Insurance's determination that Industrial Contractors failed to comply with statutory notice and posting requirements for its designated medical providers. The court held that N.D.C.C. § 65-05-28.2(5) required both written notice to employees and proper workplace posting, and that failure to satisfy either requirement invalidated the employer's provider selection. As a result, the claimant was permitted to select his own medical provider for treatment of his compensable work injury.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Maring, Justice; Gerald W. Vande Walle, C.J.; William F. Hodny, S.J.; Everett Nels Olson, S.J.; Daniel J. Crothers, J.
JURISDICTION	North Dakota
DECIDED	September 4, 2009
DOCKET	No. 20080275
DISPOSITION	affirmed
PROCEDURAL POSTURE	Industrial Contractors appealed from a Workforce Safety & Insurance final order invalidating its designated medical provider selection and allowing Rogstad to select his own medical provider. The district court affirmed the agency order, and the North Dakota Supreme Court affirmed the district court.
STANDARD OF REVIEW	Under the Administrative Agencies Practice Act, the Court reviews whether the agency order complies with law, constitutional requirements, procedural requirements, and the evidentiary and explanatory requirements of N.D.C.C. § 28-32-46. The Court does not make independent factual findings or substitute its judgment for the agency; it asks whether a reasoning mind reasonably could have determined that the findings were proven by the weight of the evidence from the entire record. Questions of law, including statutory interpretation, are fully reviewable, although an agency's reasonable

	interpretation receives deference when it does not contradict clear and unambiguous statutory language.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Industrial Contractors, Inc. v. Workforce Safety & Insurance, Francis Rogstad

TOPICS

workers compensation

judicial review of agency action

administrative procedure act

statutory interpretation

preservation of error

PRACTICE AREAS

administrative law

workers compensation

employment law

QUESTIONS PRESENTED

1. Whether N.D.C.C. § 65-05-28.2(5) required Industrial Contractors to provide both written notice to employees and properly displayed workplace notice of its preferred medical provider selection and the requirements for using that provider.
2. Whether WSI properly interpreted and applied N.D.C.C. § 65-05-28.2(5) notwithstanding Industrial Contractors' participation in WSI's broader risk-management program and related regulations.
3. Whether the agency's finding that Industrial Contractors failed to comply with the statutory notice requirements was supported by a preponderance of the evidence.
4. Whether Industrial Contractors' arguments concerning the entire risk-management program and related regulations were preserved for appellate review.

HOLDINGS

1. N.D.C.C. § 65-05-28.2(5) requires an employer to provide written notice to employees and to properly post notice of its designated medical provider selection in a conspicuous manner and in a sufficient number of places to reasonably inform employees of the provider and the statutory treatment requirements. Failure to comply with either notice requirement invalidates the employer's provider selection and permits the employee to make the initial provider selection.
2. WSI did not err by determining that Industrial Contractors' participation or approval under the broader risk-management program did not excuse subsequent noncompliance with the specific notice requirements of N.D.C.C. § 65-05-28.2(5).
3. A reasoning mind reasonably could have found, based on the weight of the evidence in the entire record, that Industrial Contractors failed to comply with the specific notice requirements of N.D.C.C. § 65-05-28.2(5).
4. The Court would not consider Industrial Contractors' arguments concerning compliance with the entire risk-management program, related regulations, or an allegedly incorporated publication because those

arguments were not presented in the administrative proceedings and the publication was not part of the record.

KEY QUOTATIONS

“The plain language of N.D.C.C. § 65-05-28.2(5) requires both written notice to the employee and posting of an employer's designated medical provider selection under the program, and any failure to comply with either requirement under “this subsection invalidates the [employer's] selection,” permitting the employee's initial selection of a medical provider.” (¶ 12)

“We further hold that WSI did not err as a matter of law in concluding that Industrial Contractors selection of a designated medical provider was invalid and that Rogstad was permitted to select his own medical provider” (¶ 17)

FACTUAL BACKGROUND

Francis Rogstad was injured on April 3, 2006, while working as a boilermaker for Industrial Contractors. Industrial Contractors had selected preferred medical providers and gave employees a designated-provider form, but its worksite notices were posted in certain lunchrooms and offices rather than in the temporary lunchroom used by Rogstad and his coworkers. The posted notice identified providers but did not explain the statutory requirement to use a preferred provider or obtain a referral for further treatment. WSI found that Industrial Contractors failed to comply with the notice requirements of N.D.C.C. § 65-05-28.2(5), invalidated the provider selection, and permitted Rogstad to select his own provider.

PROCEDURAL HISTORY

WSI accepted Rogstad's workers' compensation claim and initially denied further benefits because he had not treated with Industrial Contractors' designated providers or obtained a referral. After a formal hearing, the ALJ found that Industrial Contractors had failed to comply with the statutory posting requirements and recommended vacating the denial of benefits. WSI adopted the ALJ's recommendation as its final order, and the district court affirmed.

DISPOSITION

affirmed

CASES CITED

- Bergum v. North Dakota Workforce Safety & Ins., 2009 ND 52, ¶ 8, 764 N.W.2d 178
- Forbes v. Workforce Safety & Ins. Fund, 2006 ND 208, ¶ 10, 722 N.W.2d 536
- Reopelle v. Workforce Safety & Ins., 2008 ND 98, ¶ 9, 748 N.W.2d 722
- Roberts v. North Dakota Workmen's Comp. Bur., 326 N.W.2d 702, 704-05 (N.D. 1982)
- Power Fuels, Inc. v. Elkin, 283 N.W.2d 214, 220 (N.D. 1979)
- Stein v. Workforce Safety & Ins., 2006 ND 34, ¶ 6, 710 N.W.2d 364
- Victor v. Workforce Safety & Ins., 2006 ND 68, ¶ 12, 711 N.W.2d 188

- Houn v. Workforce Safety & Ins., 2005 ND 115, ¶ 4, 698 N.W.2d 271
- People to Save the Sheyenne River, Inc. v. North Dakota Dep't of Health, 2008 ND 34, ¶ 15, 744 N.W.2d 748
- State v. FreeEats.com, Inc., 2006 ND 84, ¶ 14, 712 N.W.2d 828
- S & S Landscaping Co. v. North Dakota Workers' Comp. Bur., 541 N.W.2d 80, 83 (N.D. 1995)
- Froysland v. North Dakota Workers Comp. Bur., 432 N.W.2d 883, 890 n. 4 (N.D. 1988)
- Kroeplin v. North Dakota Workmen's Comp. Bur., 415 N.W.2d 807, 808 n. 1 (N.D. 1987)
- Stenvold v. Workforce Safety & Ins., 2006 ND 197, ¶ 15, 722 N.W.2d 365
- Sprunk v. North Dakota Workers Comp. Bur., 1998 ND 93, ¶ 7, 576 N.W.2d 861

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