

SUPREME COURT OF NEBRASKA

D'Quaix v. Chadron State College

272 Neb. 859 (Neb. 2007) · No. S-06-548 · Decided January 5, 2007

SUMMARY

The Supreme Court of Nebraska held that an employer was entitled to credit for workers’ compensation benefits it voluntarily paid before a compensation award, even though the award did not expressly provide for that credit. Because the employer paid the remaining balance within 30 days after the award, the claimant was not entitled to a waiting-time penalty or attorney fees. The court affirmed the Workers’ Compensation Court’s order.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Gerrard, J.; Heavican, C.J.; Wright, J.; Connolly, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	January 5, 2007
DOCKET	S-06-548
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a review panel decision of the Nebraska Workers' Compensation Court affirming a single judge's denial of the claimant's motion for a waiting-time penalty and attorney fees.
STANDARD OF REVIEW	Under Neb. Rev. Stat. § 48-185, the appellate court may modify, reverse, or set aside a Workers' Compensation Court decision only when the court acted without or in excess of its powers, the judgment or award was procured by fraud, the record lacks sufficient competent evidence, or the findings do not support the order or award.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Nebraska; binding precedent in Nebraska.
PARTIES	Sara D'Quaix v. Chadron State College

TOPICS

- workers compensation
- remedies
- appellate procedure
- evidence
- employment law

PRACTICE AREAS

workers compensation

employment law

remedies

appellate procedure

evidence

QUESTIONS PRESENTED

1. Whether an employer is entitled to credit for voluntary workers' compensation payments made before entry of an award when the award does not expressly grant that credit.
2. Whether the employer's evidence of preaward payments at a postaward hearing constituted an impermissible collateral attack on the prior award or an improper reconsideration of previously admitted evidence.
3. Whether the claimant was entitled to a waiting-time penalty and attorney fees under Neb. Rev. Stat. § 48-125 when the employer's preaward payments, together with its postaward payment, satisfied the award within 30 days.

HOLDINGS

1. An employer remains entitled to credit for voluntary workers' compensation payments made before an award, even when the award does not expressly provide for the credit.
2. Admission of evidence concerning the employer's voluntary preaward payments was not a collateral attack on the prior award because the credit issue had not been decided by that award.
3. D'Quaix was not entitled to a waiting-time penalty or attorney fees because the employer paid the balance of the award within 30 days after entry and its preaward payments were properly credited.

KEY QUOTATIONS

“A party may not have double recovery for a single injury.” (at 562)

“The State was entitled to credit for the voluntary payments it made before the award was entered.” (at 562)

FACTUAL BACKGROUND

D'Quaix suffered a work-related occupational injury involving allergic contact dermatitis and chemical hypersensitivity while employed by Chadron State College. Before the compensation award, the College voluntarily paid \$30,819.29 in temporary total disability, vocational-rehabilitation, and permanent partial disability benefits. The Workers' Compensation Court later awarded D'Quaix \$39,370.24 in disability benefits without expressly stating that the College was entitled to credit for its prior payments. The College paid an additional \$12,052 after the award, and the court found that D'Quaix had received all benefits awarded within the statutory period.

PROCEDURAL HISTORY

D'Quaix filed a workers' compensation petition alleging a work-related injury and seeking benefits, a statutory waiting-time penalty, and attorney fees. The single judge awarded disability benefits but did not expressly address the employer's credit for voluntary preaward payments; after the employer paid the remaining balance,

the judge denied D'Quaix's motion for a penalty and attorney fees. The review panel affirmed, and the Nebraska Supreme Court moved the appeal to its docket on its own motion and affirmed.

DISPOSITION

affirmed

CASES CITED

- Ortiz v. Cement Products, 270 Neb. 787, 708 N.W.2d 610 (2005)
- Dawes v. Wittrock Sandblasting & Painting, 266 Neb. 526, 667 N.W.2d 167 (2003)
- Kimminau v. Uribe Refuse Serv., 270 Neb. 682, 707 N.W.2d 229 (2005)
- Rapp v. Hale, 170 Neb. 620, 103 N.W.2d 851 (1960)
- Gifford v. Ag Lime, Sand & Gravel Co., 187 Neb. 57, 187 N.W.2d 285 (1971)
- Vowers & Sons, Inc. v. Strasheim, 254 Neb. 506, 576 N.W.2d 817 (1998)