

COURT OF APPEALS OF TEXAS, SECOND DISTRICT OF TEXAS, FORT
WORTH

Victor McKoy v. City of Fort Worth, Texas

No. 2-09-151-CV · No. No. 2-09-151-CV · Decided November 25, 2009

SUMMARY

The Texas Court of Appeals addressed whether the City of Fort Worth waived its right to contest the compensability or extent of additional knee conditions under the Texas Workers’ Compensation Act. Relying on the Texas Supreme Court’s intervening decision in *State Office of Risk Management v. Lawton*, the court held that disputes concerning the extent of an accepted injury are governed by the applicable medical-bill deadline rather than the sixty-day compensability deadline. Because the City contested the additional conditions within forty-five days of receiving the relevant medical documentation, the court affirmed summary judgment for the City.

CASE DETAILS

COURT	Court of Appeals of Texas, Second District of Texas, Fort Worth
WRITING FOR THE COURT	Bob McCoy; Dauphinot; McCoy; Meier
JURISDICTION	Texas
DECIDED	November 25, 2009
DOCKET	No. 2-09-151-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	McKoy appealed the trial court's order granting the City of Fort Worth's motion for summary judgment in the City's suit to set aside a Texas Workers' Compensation Appeals Panel decision.
STANDARD OF REVIEW	The court reviewed the summary judgment de novo, determining whether the movant established that no genuine issue of material fact existed and that it was entitled to judgment as a matter of law. Evidence favorable to the nonmovant was taken as true, with reasonable inferences and doubts resolved in the nonmovant's favor.
PRECEDENTIAL VALUE	Memorandum opinion; likely nonprecedential under Tex. R. App. P. 47.4
PARTIES	Victor McKoy v. City of Fort Worth, Texas

TOPICS

workers compensation

statutory interpretation

standard of review

appellate procedure

PRACTICE AREAS

workers compensation

employment law

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether the City's acceptance of McKoy's initial knee injury rendered Texas Labor Code section 409.021(c)'s sixty-day waiver provision applicable to later disputes concerning the extent of the injury.
2. Whether the City waived its right to contest the Baker's cyst, bursitis, and chondromalacia by failing to contest those conditions within sixty days after receiving notice of the initial injury.
3. Whether the trial court properly granted summary judgment for the City.

HOLDINGS

1. Once the City accepted McKoy's initial knee injury as compensable, a later dispute concerning the Baker's cyst, bursitis, and chondromalacia was an extent-of-injury dispute governed by the applicable forty-five-day deadline, not the sixty-day compensability deadline.
2. The City did not waive its right to contest the extent of McKoy's injury because it acted seven days after receiving the relevant medical documentation, well within the applicable forty-five-day period.
3. The trial court properly granted the City's motion for summary judgment.

KEY QUOTATIONS

“nowhere in the text of the rule, the statute, or the Texas Register is there a suggestion that a carrier waives the right to challenge the extent of an injury if the extent of that claim was reasonably discoverable within the period for determining compensability” (8)

FACTUAL BACKGROUND

McKoy, a City employee, reported a work-related right-knee injury, and the City accepted the initial sprain as compensable and began paying benefits within the sixty-day period under Texas Labor Code section 409.021(c). An MRI later disclosed a Baker's cyst, grade III-IV chondromalacia, and bursitis. The City received the additional medical information and contested the newly identified conditions after the sixty-day compensability period but within forty-five days of receiving the further medical documentation.

PROCEDURAL HISTORY

A workers' compensation hearing officer determined that the City waived its right to contest the compensability of McKoy's Baker's cyst and bursitis but did not waive its right to contest grade III-IV chondromalacia. The appeals panel affirmed. The City sought judicial review in district court, which granted the City's motion for summary judgment. The court of appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- State Office of Risk Management v. Lawton, 256 S.W.3d 436 (Tex. App.—Waco 2008, pet. granted)
- State Office of Risk Mgmt. v. Lawton, No. 08-0363, 2009 WL 2667360, at *1-*3 (Tex. Aug. 26, 2009)
- Sanders v. American Protection Insurance Co., 260 S.W.3d 682 (Tex. App.—Dallas 2008, no pet.)
- Federal Insurance Co. v. Ruiz, 124 S.W.3d 705 (Tex. App.—Austin 2003, pet. denied)
- Hilland v. Arnold, 856 S.W.2d 240, 242 n.1 (Tex. App.—Texarkana 1993, no writ)
- Sw. Elec. Power Co. v. Grant, 73 S.W.3d 211, 215 (Tex. 2002)
- City of Houston v. Clear Creek Basin Auth., 589 S.W.2d 671, 678 (Tex. 1979)
- Valence Operating Co. v. Dorsett, 164 S.W.3d 656, 661 (Tex. 2005)
- Rhone-Poulenc, Inc. v. Steel, 997 S.W.2d 217, 222 (Tex. 1999)

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