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Employers and Workers Compensation Insurers Must Seek Reimbursement Rather Than Offset for Self-Funded Short Term Disability Payments

By: Luke A. Smith

On February 27, 2019, the Minnesota Supreme Court held that an employer and workers' compensation insurer cannot offset workers' compensation benefits for self-funded short term disability payments. The employer must instead file a motion to intervene seeking reimbursement for the short-term disability payments. The Supreme Court allowed an employee to double recover as a result of the employer and insurer's failure to use the correct procedure in seeking reimbursement.

In *Bruton v. Smithfield Foods, Inc.*, an employer with a self-funded short term disability policy took an offset against temporary total disability benefits claimed by the employee. No. WC17-6113 (WCCA May 21, 2018). The employer carried a high deductible for its workers' compensation policy, but was not self-insured. The employee sustained a disabling work-related injury. The employer initially denied primary liability for the alleged work-related injury, and instead authorized short term disability benefits under its self-funded short term disability policy. After the primary denial was disputed by the employee, the employer later admitted primary liability for the work-related injury, ceased paying short term disability benefits, and reinstated temporary total disability benefits thereafter. The employer did not intervene, and introduced a copy of the short term disability policy into evidence at the hearing. The policy language did not set forth the contractual relationship between the short term disability plan administrator and the employer, nor did it contain a claw back provision (a right to reimbursement for overpaid short term disability benefits).

Initially, the compensation judge allowed the employer an offset against temporary total disability benefits for short term disability benefits paid. The basis for the judge's decision was legislative intent disfavoring double recovery. The WCCA reversed this decision. The WCCA explained that the payer of workers' compensation benefits was the insurer, not the employer (despite the high deductible). Additionally, the short term disability benefits were not a wage continuation plan, for which an offset would be available. As a result, the question was not whether the employer can offset benefits paid under two different disability policies, the question was whether the employer should be reimbursed by the insurer for short term disability benefits paid. The correct manner in which to seek reimbursement is to intervene in the claim. Additionally, the WCCA indicated that it could not conclude from the short term disability policy language whether the employer (as opposed to the short term disability plan administrator) paid the short term disability benefits, nor whether the employer had a right to reimbursement for overpaid benefits. Interestingly, this analysis took place despite the stipulation by the parties that the employer self-funded the short term disability policy.

The Minnesota Supreme Court affirmed the WCCA. *Bruton v. Smithfield Foods, Inc. et al.*, (Minn. Feb. 27, 2019), available at <https://law.justia.com/cases/minnesota/supreme-court/2019/a18-0914.html>. The Minnesota Supreme Court acknowledged that the legislature did not intend to allow double recovery. The Court noted that the Workers'

Compensation Act specifically authorizes offsets for payments received by employees from various sources, which do not include self-funded short term disability plans. However, the Court rejected the argument that this absence of an offset provision for short term disability benefits was a “small legislative hole” that should be filled in by the judiciary. It instead held that because there is no express statutory basis for an offset, no offset is available.

In the presence of litigation, the difference between an offset and reimbursement is one of form rather than function. The significance of the issue is that there is no mechanism for a party in interest to seek reimbursement in the absence of litigation brought by the employee. An employer that pays short term disability benefits, and later accepts workers’ compensation liability for the same time period may therefore be left without recourse unless the employee initiates litigation.

The takeaway for employers that fund their own short term disability policies is that they cannot simply reduce workers compensation benefits by the amount of short term disability benefits paid. Instead, employers will need to file a motion to intervene in workers compensation litigation, provide evidence that they are in fact self-funding the short term disability benefits, and provide evidence of a claw back provision. Although this case did not involve an employer that was also self-insured for workers’ compensation benefits, it would appear from the analysis that the same procedure would be required from such an employer.

If you do come across a situation in which advice is needed with respect to coordination of disability payments with workers’ compensation benefits, please feel free to reach out to myself, or any of the attorneys here at Brown & Carlson. We will happily walk you through that scenario, and direct you to any potential defenses available. Additionally, if this is an urgent matter, please feel free to contact the Brown and Carlson hotline at (855) 844.7070, as someone will always be available to answer your call!

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