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Koback v. Municipal Employees' Retirement System of R.I., 252 A.3d 1247 (R.I. 2021)

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Workers' Compensation. *Koback v. Municipal Employees' Retirement System of R.I.*, 252 A.3d 1247 (R.I. 2021). The Workers' Compensation Court (WCC) does not possess statutory authority to award attorneys' fees on appeals from decisions by the Retirement Board of Municipal Employees' Retirement System (MERS) with respect to accidental disability retirement (ADR) benefits.

FACTS AND TRAVEL

The petitioner, Timothy Koback, alleged that on March 24, 2012, he sustained an injury during a patient transfer while working as a firefighter for the city of Woonsocket.¹ Pursuant to Rhode Island General Laws section 45-21.2-9 of the Administrative Procedures Act (APA), Koback applied for accidental disability retirement (ADR) benefits with the respondent, Retirement Board of Municipal Employees' Retirement System of Rhode Island (MERS).² After determining that Koback did not prove his injuries arose from his duties as a firefighter, Koback's ADR application was denied by the retirement board and was denied a second time after Koback requested reconsideration.³

Pursuant to Rhode Island General Laws section 45-21.1-9 of the APA, Koback appealed the retirement board's decision to the Workers' Compensation Court (WCC).⁴ The matter was assigned to a trial judge who issued a pretrial order denying the petition on May 23, 2017.⁵ Koback then filed a timely claim for a trial *de novo*.⁶ After holding a trial, the WCC granted Koback's petition seeking

1. *Koback v. Mun. Emps. Ret. Sys. of R.I.*, 252 A.3d 1247, 1249 (R.I. 2021).

2. *Id.*

3. *Id.*

4. *Id.* In 2011, the General Assembly changed the forum for litigants and granted jurisdiction to the WCC to hear ADR claims filed by certain parties aggrieved by a determination made by the retirement board for injuries occurring after July 1, 2011. 45 R.I. GEN. LAWS § 45-21.1-9 (2021).

5. *Koback*, 252 A.3d at 1249.

6. *Id.*

ADR benefits and awarded a fee to his counsel.⁷ MERS objected to the fee awarded to Koback's counsel, arguing that the WCC lacked statutory authority to award attorneys' fees.⁸

A hearing was held before the WCC.⁹ The trial judge determined that the WCC was statutorily authorized to award attorneys' fees and that the amount awarded was fair and reasonable.¹⁰ Koback then filed an appeal to the Appellate Division of the WCC, arguing that the state Workers' Compensation Act, G.L. 1956 § 28-35-32, authorizes the WCC to award attorneys' fees where a party has successfully challenged an adverse ADR decision made by MERS.¹¹ The Appellate Division agreed, reasoning that within the meaning of the statute, an appeal in an ADR case is a "proceeding," a firefighter is an "employee," a notice of appeal to the WCC is a "petition," and ADR benefits are "compensation."¹² Additionally, the Appellate Division upheld the attorneys' fee award as reasonable and awarded an additional fee for Counsel's work before the Appellate Division.¹³ As a result, MERS filed a writ of certiorari,

7. *Id.* In support of his application for attorneys' fees, Koback's counsel submitted a fee affidavit, detailing the work his office performed and the hours spent on the case, along with a list of fees and costs incurred, for a total bill of \$10,442.02. *Id.* Koback's counsel later submitted a supplemental affidavit, attesting to his credentials and the difficulty of the case, and filed an affidavit billing an additional \$2,790 for work performed after the WCC rendered its decision. *Id.* at 1250.

8. *Id.*

9. *Id.*

10. *Id.* A decree was entered ordering that Koback was to be paid ADR benefits and that his attorney be paid a fee of \$12,000, plus costs of \$418.27. *Id.*

11. *Id.* Section 28-35-32 states:

In proceedings under this chapter, and in proceedings under chapter 37 of this title, costs shall be awarded, including counsel fees and fees for medical and other expert witnesses, including interpreters, to employees who successfully prosecute petitions for compensation; petitions for medical expenses; petitions to amend a preliminary order or memorandum of agreement; and all other employee petitions, except petitions for lump-sum commutation

28 R.I. GEN. LAWS § 28-35-32 (2021).

12. *Koback*, 252 A.3d at 1250 (citing 28 R.I. GEN. LAWS § 28-35-32 (2021)); see also R.I. GEN. LAWS § 28-29-2(4) (2021).

13. *Koback*, 252 A.3d at 1250.

which the Rhode Island Supreme Court granted on November 18, 2019.¹⁴

ANALYSIS AND HOLDING

Upon review, the Rhode Island Supreme Court initially sought to determine whether the WCC has the authority to award attorneys' fees and costs following an appeal from a decision of the retirement board pursuant to section 45-21.2-9(f).¹⁵ The Court began by conducting a review of the statutory language and the legislative history of section 45-21.2-9, the statute regarding the WCC's jurisdiction to hear ADR claims.¹⁶ The Court explained that "[p]rior to July 1, 2011, a party wishing to challenge an adverse ADR decision made by the retirement board was required to file an administrative appeal to the Superior Court pursuant to G.L. 1956 § 42-35-15 of the Administrative Procedures Act (APA)."¹⁷ However, in 2011, the General Assembly changed the forum for litigants and granted jurisdiction to the WCC to hear ADR claims filed by certain parties aggrieved by a determination made by the retirement board for injuries occurring after July 1, 2011.¹⁸ The Court also noted that nowhere in section 45-21.2-9 is there specific authority for the WCC to award attorneys' fees and costs to those aggrieved applicants for ADR benefits whose claims are successful.¹⁹ After emphasizing the Court's staunch adherence to the "American rule,"²⁰ the Court determined that the General Assembly intended to provide a more expansive forum for ADR benefits claims without granting the authority to the WCC to award attorneys' fees.²¹

14. *Id.*

15. *Id.* at 1252.

16. *Id.* at 1251-54 (quoting 45 R.I. GEN. LAWS § 45-21.2-9 (2021)).

17. *Id.* at 1252 (citing 42 R.I. GEN. LAWS § 42-35-15 (2021)).

18. *Id.* (citing 45 R.I. GEN. LAWS § 45-21.2-9 (2021)).

19. *Id.* (citing 45 R.I. GEN. LAWS § 45-21.2-9 (2021)).

20. *Id.* (quoting *Tri-Town Constr. Co., Inc. v. Com. Park Assoc.* 12, 139 A.3d 467, 478 (R.I. 2016)). The Court's "staunch[] adhere[nce] to the 'American rule' that requires each litigant to pay its own attorney's [sic] fees" requires that there be an explicit statutory authority for the award of attorney's fees. *Id.*

21. *Id.* (citing *Rivera v. Emps. Ret. Sys. of R.I.*, 70 A.3d 905, 910 (R.I. 2013)). "The General Assembly's deliberate silence and the absence of any explicit authority concerning the award of counsel fees and costs in § 45-21.2-9 is significant." *Id.*

The Court next examined section 28-35-20.²² Koback contended that by explicitly referencing section 28-35-20, section 45.21.2-9 authorized the WCC to award attorneys' fees.²³ The Court disagreed.²⁴ Writing for the Court, Justice Lynch Prata explained that section 28-35-20—which provides that payments ordered by the court are payable within fourteen days, including “weekly benefits, medical expenses, costs, and attorneys’ fees”—merely lists types of payments otherwise made available by law that could be included in a pretrial order.²⁵ The Court also noted that if the WCC was independently authorized to award attorneys’ fees and costs by virtue of reference to section 28-35-20, then the court would also be authorized to award the other categories of relief referenced including medical expenses, which would lead to absurd results in ADR cases.²⁶ Therefore, the Court found that section 45.21.2-9 did not authorize the WCC to award attorneys’ fees by referencing section 28-35-20.²⁷

Finally, the Court examined whether *Lang v. Municipal Employees’ Retirement System*²⁸ provided binding authority that attorneys’ fees are to be awarded in successful ADR benefits cases.²⁹ In *Lang*, the Court concluded that “all proceedings are subject to chapters 29-38 of title 28, and the statute contains no limiting language.”³⁰ Koback contended that the holding in *Lang* was

22. *Id.* at 1253-54 (citing 28 R.I. GEN. LAWS § 28-35-20 (2021)).

23. *Id.* at 1253-54; *see* 45 R.I. GEN. LAWS § 45-21.2-9(h) (2021) (“In the event that a party files a notice of appeal to the workers’ compensation court, the order of the retirement board shall be stayed pending further action by the court pursuant to the provisions of Rhode Island general law § 28-35-20.”); *see* 45 R.I. GEN. LAWS § 45-21.2-9(i) (2021) (“Upon receipt of the record of proceedings before the retirement board, the court shall assign the matter to a judge and shall issue a notice at the time advising the parties of the judge to whom the case has been assigned and the date for pretrial conference in accordance with Rhode Island [G]eneral [L]aw § 28-35-20.”).

24. *Koback*, 252 A.3d at 1254.

25. *Id.* at 1254 (quoting 28 R.I. GEN. LAWS § 28-35-20(c) (2021)).

26. *Id.*

27. *Id.*

28. *Lang v. Mun. Emps. Ret. Sys.*, 222 A.3d 912 (R.I. 2019).

29. *Id.* at 918.

30. *Koback*, 252 A.3d at 1254.

applicable to the award of attorneys' fees in ADR claims.³¹ The Court disagreed and determined that "petitioner's contention is of no moment, and we need not be concerned about our holding in Lang being applicable to the award of attorneys' fees in ADR claims."³² Ultimately, the Court found against Koback, concluding that the WCC is not vested with statutory authority to award attorneys' fees following the appeal from an adverse decision of the retirement board.³³ As such, the respondent's remaining arguments were not addressed.³⁴

COMMENTARY

Prior to this decision, the Rhode Island Supreme Court had not considered whether the WCC has the authority in ADR cases to unilaterally shift fees so that MERS must pay the petitioner's attorneys' fees and costs following a successful appeal from a decision of the retirement board. Pursuant to the Court's holding, however, it is clear that the WCC does not have this authority.³⁵ While the Court acknowledged the legislative intent to establish the WCC as an expansive forum within which claims for ADR benefits are decided and adjudicated, it also found from the statutory language that the WCC was not authorized to award attorneys' fees in these cases.³⁶ This case displays the Rhode Island Supreme Court's position on adhering to the "American Rule," requiring each party to pay their own legal fees.³⁷

31. *Id.*; see 28 R.I. GEN. LAWS § 28-35-32 (2021) (authorizing the WCC to an award of attorneys' fees where a party has successfully challenged an adverse ADR decision made by MERS).

32. *Koback*, 252 A.3d at 1254.

33. *Id.* at 1255.

34. *Id.* In addition to arguing that the WCC lacked the authority to award attorneys' fees and costs following an appeal from a decision of the retirement board, MERS contended that section 28-35-32, the attorneys' fees provision of the Workers' Compensation Act, and chapters 29 through 37 of title 28 of the general laws did not provide for an award of attorneys' fees in this case because Koback's claim did not fall into one of the statutorily authorized categories allowing for an award of fees and costs. Further, MERS contended that even if attorneys' fees are proper, Koback's counsel did not submit legally sufficient evidence to support such fees under the Court's precedent. *Id.* at 1251.

35. *Id.* at 1255.

36. *Id.* at 1253.

37. *Id.*

As such, regardless of the outcome, a party seeking appellate review of a decision of the retirement board pursuant to section 45-21.2-9(f) will not receive attorneys' fees.³⁸ Petitioners appealing an adverse ADR decision will need to consider this decision in assessing their case. There may be cases in which the absence of a potential award of attorneys' fees and costs becomes the determining factor in whether a municipal worker appeals a decision by retirement board. Furthermore, without a potential award of attorneys' fees and costs, lawyers may view ADR cases, in general, as not worth the investment. Therefore, this decision may have a chilling effect on municipal workers who believe they have been wrongly denied ADR benefits. Ultimately, this decision may not have a substantial impact at all because since the statute was passed in 2012, only 15 municipal workers have appealed benefits denials.

CONCLUSION

The Rhode Island Supreme Court held that the Appellate Division of the Workers' Compensation Court is not statutorily authorized to award attorneys' fees and costs in ADR claims. As a result, the Court held that the Appellate Division acted in excess of its statutory authority in concluding that section 45-21.2-9 conferred authority to award attorneys' fees in this case. Therefore, the Court quashed the decree of the Appellate Division.

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38. *Id.* at 1255.