

Significant Decision

The Supreme Court's decision in Smith/Amar validates State Fund's practice of not paying attorney fees of employees' counsel even if they successfully challenge utilization review ("U.R.") denials of medical treatment.

The Supreme Court of California

Dwight Smith v. WCAB and California Youth Authority, et al.

and

David Amar v. WCAB and Mel Clayton Ford, et al.

(Filed 05/11/2009)

<http://www.courtinfo.ca.gov/opinions/documents/S150528.PDF>

Significance:

In most cases, awards of future medical care are for life. Prior to the Court of Appeal's judgment in this matter, it was State Fund's procedure to deny liability for attorney fees of counsel who successfully proved a disputed treatment is reasonably required to cure or relieve the injured worker from the effects of the industrial injury. The Court of Appeal's judgment effectively held State Fund's procedure was contrary to the purpose of Labor Code § 4607.

In reversing the judgment of the Court of Appeal, the Supreme Court concluded the language of Labor Code § 4607 is unambiguous. The Court held:

"[S]ection 4607 authorizes an award of attorney fees only to employees who successfully resist efforts to terminate their award of medical treatment. *It does not permit an award of fees to employees who successfully challenge the denial of specific treatment requests.*" (Italics added.)

Section 4607 was added to the Labor Code in 1973, and provides as follows:

Where a party to a proceeding institutes proceedings to terminate an award made by the appeals board to an applicant for continuing medical treatment and is unsuccessful in such proceedings, the appeals board may determine the amount of attorney's fees reasonably incurred by the applicant in resisting the proceeding to terminate the medical treatment, and may assess such reasonable attorney's fees as a cost upon the party instituting the proceedings to terminate the award of the appeals board.

Facts:

The Supreme Court's opinion concerned two cases consolidated by the Court of Appeal—*Smith v. WCAB* and *Amar v. WCAB*. State Fund is the adjusting agent in *Smith*, and is the real party in interest in *Amar*.

In *Smith*, the applicant sustained industrial cumulative injury to his right shoulder, neck and psyche. The WCJ approved the parties' stipulated award that included future medical treatment. Eight years later, State Fund refused to authorize epidural injections to Smith's back. Smith returned to the attorney who represented him for the stipulated award, who in turn sought utilization review. Eventually, Smith was examined by an AME, who concluded Smith's back pain was caused by the work related injuries. Thereafter, State Fund authorized the injections without a formal hearing. For his services, Smith's attorney requested a fee from State Fund. The WCJ denied the request, and the Board—in a split panel decision—denied Smith's petition for reconsideration.

In *Amar*, the applicant sustained industrial injury to his right foot. The WCJ approved the parties' stipulated award that included future medical treatment. Later, within five years of the date of injury, a dispute arose when State Fund refused to authorize 1) a weight loss program, and 2) treatment for Amar's nonindustrial diabetes. The Board found only the weight loss program was medically necessary to relieve the effects of the foot injury, and ordered it reinstated. For his services, Amar's attorney requested a fee from State Fund. The WCJ denied the request, and the Board denied Amar's petition for reconsideration.

Holding and Rationale:

In reversing the judgment of the Court of Appeal, the Supreme Court held the language of Labor Code § 4607 is unambiguous. Section 4607 authorizes an award of attorney fees when a defendant "institutes proceedings to terminate an award." But, section 4607 does not authorize an award of attorney fees when a defendant institutes proceedings to deny a specific treatment request. The Court compared and distinguished these concepts by contrasting the issue that is challenged in each proceeding. In the words of the Court:

When a party institutes termination proceedings, it challenges the continuing necessity for the Board's award of future treatment. By contrast, when an employer or insurer denies a specific treatment request, it challenges whether the sought medical care is "reasonably required to cure or relieve the injured worker from the effects of his or her injury" (§ 4600, subd. (a).) The difference between the two concepts is illustrated by our decision in *Barnes v. Workers' Compensation Appeals Board* (2000) 23 Cal.4th 679.

The practical effect of this decision is Labor Code § 4607 does not permit an award of attorney fees to employees who successful challenge State Fund's U.R. denials of medical treatment.

Ordinarily, Supreme Court decisions are final 30 days after filing. In the present matter, the Court's decision is expected to become final June 10, 2009.