



Significant Decision

No. 18-05

August 23, 2018

KING V. COMPPARTNERS

IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA
(S232197)

FILED: AUGUST 23, 2018

Injuries arising from the utilization review process are compensable under the WCA, and exclusive remedy protections preempt a tort claim against the utilization review provider.

Significance: Allegations of medical negligence by a UR physician for failure to warn of the dangers of sudden cessation of a medication, or to provide a weaning plan, fall within the exclusive remedy protections of the Workers' Compensation Act, which preempts the employee's tort claims.

Facts: The injured worker suffered anxiety and depression due to an industrial back injury and was prescribed Klonopin, a psychotropic drug. This medication was reviewed twice through UR and decertified both times -- but neither UR physician saw the patient and neither warned him of the dangers of an abrupt withdrawal from Klonopin. When the drug was withdrawn, the worker suffered four seizures, resulting in additional physical injuries. The plaintiffs brought a civil action against the workers' compensation UR physicians and the UR organization for negligence. The Court of Appeal below found that there was a physician-patient relationship between the URO and the employee, and thus the URO had a duty of care to warn the patient of the dangers of withdrawal. In its published decision, the Court of Appeal had held that the plaintiffs were legally entitled to amend their complaint in an effort to state a cause of action that would avoid the exclusive remedy.

Holding: In a unanimous 7-0 decision, the Supreme Court held that plaintiffs' tort claims are collateral to and derivative of a compensable injury, and defendants performed a statutorily recognized utilization review function on behalf of King's employer -- all of which falls under the protections of exclusive remedy under §3602. Because plaintiffs cannot amend the complaint in a manner that would alter this conclusion, the Supreme Court reversed the Court of Appeal's determination that plaintiffs were permitted to amend their pleadings in an effort to bolster a claim that defendants were liable in tort for a failure to warn.

Discussion: This case could have had far-reaching and serious consequences to the medical dispute resolution process under §4610, had the Supreme Court upheld the Court of Appeal. Instead, in a decision that carefully and correctly reviews the legislative history behind UR and IMR, the Supreme Court has provided a binding opinion reaffirming that injuries derivative of a compensable workplace injury fall within the scope of the workers' compensation bargain and are therefore compensable within the workers' compensation system.

In the decision, the Supreme Court touches on issues including whether the URO functions as an “alter ego” of the employer for purposes of exclusive remedy (it does), and whether a warning included in a UR decision falls outside the scope of the workers’ compensation claims process (it does not). The decision also goes to lengths to describe the several safeguards already in place to protect employees from the types of injuries alleged by the plaintiffs here:

- decisions to modify or deny the treatment request must be made by a licensed physician;
- medical necessity determinations must be based in accordance with MTUS;
- the URO is subject to administrative penalties; and
- the UR physician is subject to professional discipline, including the loss of medical license.

Finally, the Court also recognized that new injuries suffered as the result of utilization review process also fall within the WCA, leaving employers ultimately responsible for paying benefits related to those new injuries as compensable consequence claims.

Curiously, the Supreme Court did not address what many had considered to be a central issue: whether the UR physician has a doctor-patient relationship with the injured worker. Quite possibly, the Supreme Court side-stepped that difficult question and took the easier route provided by an exclusive remedy analysis.

The Supreme Court did leave open the possibility of a tort claim for egregious misconduct as in *Unruh*: “In other cases, however, a plaintiff may well argue that a utilization reviewer’s conduct exceeds the bounds of its role and that workers’ compensation exclusivity therefore should not apply.” But that was not an issue presented by this case.

At oral argument, plaintiffs’ counsel made several representations that were not grounded anywhere in the appellate record. The Supreme Court decision notes that these representations were nevertheless taken into consideration in a determination of whether plaintiffs should be granted leave to amend their complaint; ultimately, the court ruled that even these new “facts” would not alter the conclusion that the tort claims were preempted by the Workers’ Compensation Act.

Concurring Opinions were filed by two justices, and may prove to be the enduring legacy of the decision. Justice Liu frankly invites the Legislature to examine whether existing safeguards provide sufficient incentive for competent and careful utilization review, pointedly noting his skepticism that “a care plan... appropriate for the medical needs of the employee” was established before the Klonopin was discontinued. Even the Majority Opinion referenced the same language from §4610(i)(4)(C). Unfortunately, it does not appear that any of the justices understood that this subsection applies only to cases of concurrent review, which is defined under Reg. §9792.6(d) as “utilization review conducted during an inpatient stay” and thus is inapplicable to the facts of this case. Be that as it may, it is likely that the next legislative session will include some effort to expand the safeguards for the injured worker under utilization review.

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