Oneida Tribal Judicial System

OnΛyote ʔ a·ka Tsiʔ Shakotiyaʔ Tolé hte

TRIAL COURT

Michael B. King,
Petitioner,

v.

HRD-Benefits and
Crawford & Co. Insurance,
Respondents

Docket No: 13-TC-009

Date: August 5, 2013

DECISION

This case has come before the Oneida Tribal Judicial System, Trial Court, Judicial Officers Jean M. Webster, Kathy Hughes and Mary Adams presiding.

HISTORY

This case is an appeal of a denial of benefits by Respondent Crawford & Co. Insurance, which administers the Tribe's workers compensation insurance. Mr. King sought benefits after injuring his left knee at work on June 8, 2012. Crawford & Co. Insurance ("Crawford") denied benefits because Mr. King's permanent partial disability was rated below 7.5%. We affirm the denial.

The relevant facts are not in dispute as the parties have stipulated to the facts. The only questions are legal.

Findings of Facts

At the time of the injury on June 8, 2012, Mr. King was a 47-year old first grade teacher employed by the Oneida Tribe. On that day Mr. King went to the garden shed with three students to retrieve gardening equipment. While inside the shed, Mr. King stepped on an upside-down sprinkler spike with his left leg. He moved his left leg off. His right leg was caught up in

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some hoses. Mr. King twisted his left knee, heard it pop and fell down.

He timely reported the injury and received treatment. On November 12, 2012 Dr. Enright determined that Petitioner had reached maximum medical improvement relative to his knee and assigned the Petitioner a five percent permanent partial disability rating.

Crawford notified Mr. King it was discontinuing benefits by letter dated December 12, 2012. Mr. King timely appealed and this litigation ensued.

By way of background, Mr. King also suffered a work-related injury to his right knee in May 2011. His permanent partial disability rating was also five percent for his right knee. Because his final disability rating was below 7.5%, we denied Mr. King further benefits in *King v. Oneida HRD et al.*, 12-TC-129, (11/13/12).

ANALYSIS & CONCLUSIONS OF LAW

The legal issue is whether Mr. King's 2011 injury and subsequent five percent permanent partial disability rating for his right knee can be stacked or combined with his 2012 injury and five percent disability rating for his left knee in the current case. The significance of combining the injuries is that the Oneida Workers Compensation Ordinance limits compensation for permanent disability to those injuries rated at 7.5% or higher. Sec. 13.6-10(h). Without the 2011 injury, Mr. King's rating is five percent and thus no compensation. Including Mr. King's 2011 injury would give him a total disability rating of 10%. The Ordinance does not support combining Mr. King's separate injuries.

There are two relevant sections of the Ordinance which apply here. First, Sec. 13.6-10(h) requires an employee to have a permanent partial disability rating of 7.5% or higher in order to be eligible for compensation. In relevant part it states, "Only percentages exceeding seven and one half percent (7½%) will be deemed compensable." Second is Sec. 13.5-1 which addresses pre-existing disabilities. It states:

> However, if the permanent injury for which compensation is claimed results only in the aggravation or increase of a previously sustained permanent injury or

> physical condition, regardless of the source or cause of the previously sustained injury of physical condition, the Administrator will determine the extent of the previously sustained permanent injury or physical condition, as well as the extent of the aggravation or increase resulting from the subsequent permanent injury and will award compensation only for that part of the injury, or physical condition resulting from the subsequent permanent injury.

Reading these two provisions together, we see no path for Mr. King to be compensated for this latest injury. While this is unfortunate, we feel bound to apply the law.

Mr. King reminds us that we have the power to "interpret" the statute, argues that "logic" should guide our decision and speculates that Mr. King's original injury "contributed" to the current injury to Mr. King's left knee. While creative arguments are necessary to advance a party's cause, they are most effective when grounded in the facts and the law before the Court.

The only case cited in Mr. King's brief is *Mitchler v. Oneida HRD/Crawford*, 11-TC-038 (5/12/11), which does not help his cause. In that case, we found that Ms. Mitchler's disability ratings of five percent for each knee amounted to ten percent disability. Unlike Mr. King's situation, Ms. Mitchler's injuries arose out of the same workplace incident. Therefore, we ruled she had a total of 10% disability, could be counted as exceeding the 7.5% limit and eligible for compensation.

The *Mitchler* case, however, is distinguishable from Mr. King's. In *Mitchler*, the employee's injuries arose at the same time. Therefore, we viewed them as one injury; Sec. 13.5-1's limitation did not apply. Here, Mr. King's other knee was injured about a year earlier. There is no factual relation between the two except that they both occurred at work and were injuries to Mr. King's knees.

DECISION

We are not unsympathetic to Mr. King's situation. It is somewhat unfortunate that despite suffering significant knee injuries at work, Mr. King is not entitled to further compensation. Crawford's denial of further benefits is affirmed.