

BAD FAITH BLOG

Insurer Did Not Commit Bad Faith in Denying Worker's Comp Claim

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Summary: Worker's compensation insurer filed dispute as to whether claimant's compensable injury included right carpal tunnel syndrome, a wrist sprain/strain, and tendonitis. Following a contested case hearing with the Department of Worker's Compensation, it was found that evidence of causation was insufficient to establish claimant's injuries were work related. Claimant filed a bad faith action against the worker's compensation insurer and its claims examiner for denying her claims. After the lower court granted summary judgment in favor of the worker's compensation insurer, the Court of Appeals affirmed, holding that worker's compensation insurer's claims examiner did not act in bad faith by filing a dispute asserting that claimant's compensable injury did not extend to carpal tunnel syndrome, wrist strain/sprain or tendonitis.

Aleman v. Zenith Insurance Company, 343 S.W.3rd 817 (Tx. App. 2011)

Rita Aleman ("claimant") was employed as a packer by an automotive parts manufacturer. Zenith Insurance provided worker's compensation insurance for claimant's employer. Claimant filed an injury report alleging she had suffered an on-the-job injury to her right hand. Claimant's employer immediately referred her to a doctor who diagnosed her with a right wrist sprain and right tenosynovitis. Claimant also visited a chiropractor who diagnosed her with a wrist sprain/strain and carpal tunnel syndrome.

Zenith handled claimant's condition as a compensable but it continued to investigate the claim. As part of the investigation, Zenith's claims examiner took claimant's statement and spoke with her employer about claimant's duties. Claimant's supervisor refuted claimant's claim she packaged 600 orders a day as the entire packaging department packaged only 160 to 165 orders per day. Zenith and its claims examiner also reviewed the available medical information. Claimant stated she was still in pain five to six weeks after the date of the injury and that was inconsistent with tendonitis or tenosynovitis according to the medical disability advisor. Also, an MRI did not reveal any soft tissue swelling or tendon damage in the right wrist. Zenith also consulted numerous peer reviewed medical studies which led it to conclude that claimant's work activities would not have caused carpal tunnel syndrome.

Based on this information, Zenith decided to contest compensability and sent notice to claimant denying any further worker's compensation benefits. Zenith subsequently requested a peer review of the claim to determine the correct diagnosis and whether the medical condition could have been caused by claimant's work activities. Zenith explained that it decided to contest compensability before requesting peer review because it did not believe it would receive peer review before the statutory sixty day deadline for filing the dispute expired. If it did not contest compensability within sixty days of notice of injury, the insurer waived its right to contest compensability under Texas law.

A peer review was performed, and it was determined that a definitive diagnosis had not been established and the limited information provided regarding the work injury was inconsistent with the diagnosis of carpal tunnel syndrome.

Claimant contested the denial of the benefits, and the Texas Department of Worker's Compensation conducted a benefit review. Claimant argued she had sustained a compensable injury based on a positive nerve conduction study; however, the study had not been provided to Zenith. The study reflected the claimant had a carpal tunnel syndrome in both hands but it did not include a diagnosis of tenosynovitis. Based on this information, the Department of Worker's Compensation determined claimant sustained a compensable occupation disease/injury and Zenith paid claimant accrued and unpaid benefits.

Following the contested hearing, Zenith received a peer review report which questioned whether the carpal tunnel syndrome was related. Zenith requested the Department of Worker's Compensation to appoint a designated doctor to conduct a review. The Department of Worker's Compensation selected a designated doctor who diagnosed tenosynovitis which was work related and that she had reached maximum medical improvement for the injury with no permanent impairment. However, he also concluded that she had carpal tunnel syndrome that was not work related.

Based on this opinion, Zenith filed a dispute with the Department of Worker's Compensation contesting the compensable injury extended to carpal tunnel syndrome. Another contested case hearing was conducted where Zenith accepted the injury to the right wrist in the form of right wrist sprain and tendonitis. However, the hearing officer found that the evidence was insufficient to causally relate to right carpal tunnel syndrome as compensable injury.

Claimant filed suit alleging Zenith and its claims examiner violated provisions of the Texas Insurance Code and breached the common law duty of good faith and fair dealing. More specifically, claimant alleged Zenith failed to attempt in good faith to effectuate a prompt, fair, and equitable settlement of her claim, failed to promptly provide a reasonable explanation of the basis for its denial of the claim, and refused to pay a claim without conducting a reasonable investigation. Zenith filed a motion for summary judgment. The lower court granted summary judgment and claimant appealed.

As a general rule, there can be no claim for bad faith when an insurer has promptly denied a claim that is not covered. The Department of Worker's Compensation found that the carpal tunnel syndrome was not a work-related injury. Therefore, the trial court properly granted summary judgment in favor of Zenith on a bad faith claim related to Zenith's dispute that the compensable injury did not extend to carpal tunnel syndrome.

With regard to claimant's wrist strain/sprain and tendonitis, the appellate court found Zenith did not act in bad faith in relation to these claims. Zenith made a decision to dispute compensability of these injuries because the diagnosis was questionable. Plaintiff waited nearly three weeks to report her injury, and her statement regarding the amount and type of work she did with her hand was later refuted by her employer. There was no objective medical evidence of wrist strain/sprain as the MRI revealed no soft tissue swelling or tendon damage. Zenith believed, based on the medical information and medical literature that it reviewed, that Aleman might be suffering from a non-work related carpal tunnel syndrome. Therefore, Zenith did not know nor should it have known it was reasonably clear that the claim was covered. At the time Zenith filed the dispute with the Department of Worker's Compensation, it had only received reports from some of claimant's doctors. Whether liability is reasonably clear must be judged by the facts before the insurer at the time it denied the claim. Moreover, Zenith considered other evidence besides just the medical reports in determining whether to contest compensability.

The appeals court also found that Zenith conducted a proper investigation even though it did not request a peer review report before denying the claim. The appeals court found that even though Zenith did not wait for the peer review report before denying the claim, its investigation to that point indicated that it was not reasonably clear that claimant had sustained a compensable injury. Claimant failed to cite any authority for the proposition that Zenith acted in bad faith by disputing compensability prior to the expiration of the 60 day statutory dead line. Further, Zenith testified it decided to contest compensability before requesting the peer review because it did not believe it would receive the peer review prior to the expiration of the statutory deadline.

Claimant also alleged Zenith acted in bad faith by failing to provide a reasonable and clear explanation of the denial of the claim. Specifically, claimant argued Zenith did not identify the medical literature or provide it with a copy of the medical literature it relied on in claiming there was no causal relationship between the work activities and the diagnosed carpal tunnel syndrome. The appeals court found that Zenith's notice of its denial of the claim was stated in plain language and identified Zenith's reasons for contesting compensability. Texas law does not impose on Zenith any duty to identify the medical literature on which it relied or provide copies to the claimant in connection with the notice.

This case once again illustrates how an insurance company has the right to conduct an investigation into claims and even issue a denial of the claim before the entire investigation has been completed. Zenith had done enough investigation at the time of the denial that the court found it had a sufficient and reasonable basis for the denial even if a peer review had not yet been completed. The short 60 day time frame worked in favor of Zenith because it provided a justifiable reason for denying the claim or otherwise facing waiver of ever being allowed to challenge compensability. Insurers must often act fast in order to avoid waiver of defenses, violations of claim practices acts or exposure to statutory penalties. In this case, Zenith worked fast to do as much investigation as possible and obtain a reasonable basis to challenge the claim.

(EDITOR'S NOTE) In *Texas Mut. Ins. Co. v. Ruttiger*, the Supreme Court of Texas has issued an opinion that precludes a workers' compensation claimant from seeking extra-contractual damages from an insurer. See 2011 WL 3796353 (Tex.) (decided August 26, 2011, not yet released for official publication). In *Ruttiger*, the employee-claimant brought claims against insurer based on, in relevant part, the Texas Insurance Code, breach of the duty of good faith and fair dealing, and Texas Deceptive Trade Practices Act. The claimant obtained a judgment on a jury verdict which was subsequently affirmed by the Texas Court of Appeals. The Texas Supreme Court reversed the judgment in material part, however, finding that the Texas workers' compensation statute precluded the claimant's ability to sue under the Insurance Code or the Deceptive Trade Practices Act because the workers' compensation statute provided the exclusive remedy to claimants. Because *Ruttiger* has not been officially release it is subject to revision or even withdrawal, but if finalized in its current form, *Ruttiger* would represent a significant shift in Texas law. For instance, under *Ruttiger*, most of the causes of action pleaded by claimant in *Aleman* would have been dismissed as they sought relief under the Texas Insurance Code.