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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

SCHLUMBERGER TECHNOLOGY CORP. and,
TRAVELERS INDEMNITY CO.
OF AMERICA,

Petitioner,

vs.

ERASMO PAREDES, and
The Workers Compensation Commission
Respondent,

NO: 120,197

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Petitioners' Brief-in-Chief

Schlumberger Technology Corp. and its Workers' Compensation Insurer

Travelers Indemnity Co. of America

v.

ERASMO PAREDES

and

The Oklahoma Workers Compensation Commission

Appeal from a decision of the Workers Compensation Commission en banc
Affirming the Decision of Administrative Law Judge
Tara A. Inhofe

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April 12, 2022

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PETITIONER'S BRIEF-IN-CHIEF

COMES NOW Mia C. Rops on behalf of Petitioner, SCHLUMBERGER TECHNOLOGY CORP., and its insurance carrier, TRAVELERS INDEMNITY CO. OF AMERICA and submits the following Brief-in-Chief. This appeal is taken from an opinion of the Worker's Compensation Commission en banc finding that Administrative Law Judge Tara A. Inhofe correctly interpreted and applied the newly enacted Worker's Compensation Statute of Limitations (hereinafter "SOL") found at 85A O.S. 2019 §69(A)(1).[1] Petitioner requests that this Court review the Order issued by Administrative Law Judge Tara Inhofe filed on May 13, 2021 (hereinafter "Order") which denied Petitioner's SOL defense by incorrectly applying and misinterpreting the relevant statute.

For clarity purposes, the parties to this appeal will be referred to as they were in the underlying Worker's Compensation Commission case. Petitioner, SCHLUMBERGER TECHNOLOGY CORP. AND TRAVELERS INDEMNITY CO. OF AMERICA will be hereinafter referred to as "Employer" and the Respondent, ERASMO PAREDES, will hereinafter be referred to as "Claimant." The WORKER'S COMPENSATION COMMISSION (including ALJ Inhofe and the Commission en banc) will be referred to as "Commission." The Administrative Worker's Compensation Act[2] will be referred to as the "AWCA." Citations to the Record on Appeal will be made as "(ROA, Doc. #, page number)."

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[1] 85A O.S.§69(A)(1) (OSCN2022): A. Time for Filing. 1. A claim for benefits under this act, other than an occupational disease, shall be barred unless it is filed with the Workers' Compensation Commission within one (1) year from the date of the injury or, if the employee has received benefits under this title for the injury, six (6) months from the date of the last issuance of such benefits. For purposes of this section, the date of the injury shall be defined as the date an injury is caused by an accident as set forth in paragraph 9 of Section 2 of this title.

[2] 85A O.S. 2019 §§1, et. seq.

Introduction and Stipulated Facts of the Case

The facts of the case and the chronology of relevant events are undisputed and were stipulated to by the parties.[3] The stipulated facts of the case are as follows:

- Claimant was involved in a work-related accident on December 29, 2019.
- Claimant was found to be at Maximum Medical Improvement and released by his treating physician on January 29, 2020.
- Employer issued its last payment for medical bills (no other benefit was paid) on February 14, 2020.
- Claimant filed his CC-Form 3 with the Worker's Compensation Commission on December 3, 2020.

The issue of this appeal is the application and interpretation of the newly enacted SOL found at 85A O.S. 2019 §69 (A)(1) which states:

> A. Time for Filing.
>
> 1. A claim for benefits under this act, other than an occupational disease, shall be barred unless it is filed with the Workers' Compensation Commission within one (1) year from the date of the injury or, if the employee has received benefits under this title for the injury, six (6) months from the date of the last issuance of such benefits.
> ...

In this case, Claimant received medical treatment and the last issuance of such benefits was either the last day Claimant received medical treatment, which was January 29, 2020 or February 14, 2020, which was the last date Employer issued payment for the medical treatment. For purposes of this appeal, Employer will accept that the interpretation of the words "issuance" of benefits and "payment" of benefits has no substantive affect on the issues in this case. While six months from the date of the last "issuance" of such benefits is either

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[3] ROA, Doc. #12, page 19-20

July 29, 2020 or August 14, 2020, Employer will give Claimant the benefit of using the latest possible interpretation of the word "issuance."

Because Claimant received benefits under the act, Claimant needed to file his claim no later than six (6) months from the date of last issuance of benefits, which would have been August 14, 2020. Instead, the Commission found that the operative word "or" in the relevant statute should be used "to express alternative statutes of limitations ***with the claimant receiving the benefit of whichever of those is longer.***" Claimant did not file his claim for benefits under this act until December 3, 2020, which was almost ten (10) months after the date of the last issuance of benefits. On its face, Judge Inhofe's Order demonstrates the misapplication of the current statute by adding language to the current statute that was purposely and intentionally removed from the previous version of the statute.[4]

The transcript of the oral arguments made to the Commission en banc also demonstrates the irrelevant and inapplicable issues, which were presumably relied upon by the Commission en banc to affirm Judge Inhofe's Order.[5]

Employer brings this appeal to this Court requesting application of long-standing laws of legislative intent and strict application of the changes made to the AWCA in the 2019 legislative amendments.

[4] 85A O.S.2014 §69(A) & (B)

[5] ROA, Doc. #22 "Transcript of Appeal"

Summary of the Record

The Employer and Claimant stipulated to the relevant facts of this case. (ROA, Doc.#12 "Joint Trial Stipulations", pgs. 19-20). Trial briefs were also submitted. (ROA, Doc.#15 "Memorandum Brief of Claimant" filed April 9, 2021 & Doc.#16 "Trial Brief of Respondent" filed April 27, 2021, pgs. 25-38). In Employer's trial brief, it outlined the basics of statutory interpretation and the legislative intent when applying the 2019 legislative amendments to the previous Statute of Limitations time periods. Its main argument was that prior to the 2019 amendments, there were two (2) separate statutes of limitations periods. One period for those cases where benefits had not been paid[6], and another separate period for cases where benefits had been paid.[7]

When the Legislature amended the 2014 version of §69 in 2019, it consolidated the prior limitations periods found in (A) and (B) into one section. The consolidated SOL periods can be found in the current §69(A).[8] In the current SOL, the separate and distinct limitations periods are still outlined, but the legislature removed the language "whichever is greater" from the previous statute for cases where benefits had been paid.

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[6] 85A O.S. 2014 §69 (A): A. Time for Filing.1. A claim for benefits under this act, other than an occupational disease, shall be barred unless it is filed with the Commission within one (1) year from the date of the injury. If during the one-year period following the filing of the claim the employee receives no weekly benefit compensation and receives no medical treatment resulting from the alleged injury, the claim shall be barred thereafter. For purposes of this section, the date of the injury shall be defined as the date an injury is caused by an accident as set forth in paragraph 9 of Section 2 of this act.

[7] 85A O.S. 2014 §69 (B); B. Time for Filing Additional Compensation.1. In cases in which any compensation, including disability or medical, has been paid on account of injury, a claim for additional compensation shall be barred unless filed with the Commission within one (1) year from the date of the last payment of disability compensation or two (2) years from the date of the injury, whichever is greater.

[8] *See f.n.#1*

Employer's argument that the Legislature intended to delete those words is supported by the actual HB2367 Engrossed House Bill which left that particular language in the proposed revision. However, the resulting HB2367 Senate Committee Substitute, which was passed on April 9, 2019 removed the specific language "whichever is greater" from the prior version of the statute for cases where benefits had been issued. The Senate changes to the previous Statute of Limitations survived the House Reconciliation Committee process and was enacted into law by our Legislature on May 28, 2019.

On the other hand, Claimant's argument rested on an interpretation that the word "or" in our current statute (separating the cases where an employee has received benefits from ones where the employee has not received any benefit), tolls the one (1) year statute of limitations. (ROA, Doc.15 "Memorandum Brief of Claimant," pg. 26). Claimant then makes a contradictory argument by agreeing that "there are two distinctly different periods of limitations in the current SOL statute found at §69(A)(1)" *Id.* Therefore, even Claimant argues the word "or" separates those "two distinctly different" periods in our current SOL periods.

The questions and issues raised by the Commissioners during Oral Argument for Employer's appeal to the Commission en banc, also provides evidence they improperly applied and interpretated the 2019 legislative amendments enacted by HB2367, the AWCA and generalized Statute of Limitations laws.[9] There is some indication that the Commission en banc missed Employer's entire argument by failing to understand the AWCA's original Statute of Limitations periods enacted in 2014. (*Transcript of Appeal Before the*

[9] ROA, Doc. #22, pgs. 8-10; 12-17

Commissioners taken at the Workers Compensation Commission on January 14, 2022, in OKC, OK, pgs. 1 et. seq.)

Standard of Review

The only issue to be determined in this case is whether Judge Inhofe properly applied and interpreted the Statute of Limitations set forth in 85A O.S. 2019 §69(A)(1) to the stipulated facts of this case. Since there is no factual dispute and the only issue is application of the relevant statute, the issue becomes one of law which this Court will review de novo. *Carney v. DirectTV Group, Inc.*, 2014 OK Civ App 4, ¶ 9, 316 P.3d 234 (citing. *Lanman v. Oklahoma County Sherriff's Office,* 1998 OK 37, 958 P.2d 795). When the clear language of the statute does not support Judge Inhofe's Order, it must be vacated. *Greenway v. Nat'l Gypsum Co.,* 1956 OK 55, 296 P.2d 971.

Arguments and Legal Authority

PROPOSITION I: THE COMMISSISION IMPROPERLY INTERPRETED AND APPLIED THE CURRENT STATUTE OF LIMITATIONS

A plain reading of the relevant statute makes any further evaluation or determination of legislative intent or construction unnecessary. The plain meaning of the statute's language is conclusive as to the legislative intent of that statute. *Carney v. DirectTV Group, Inc.,* 2014 OK CIV APP 4, f.n.4, 316 P.3d 234, f.n.4 "Statutory words are to be understood in their ordinary sense, except when a contrary intention *plainly* appears (emphasis added)." *Hess v. Excise Bd. Of McCurtain County,* 1985 OK 28, ¶6, 698 P.2d 930, 932. We must also presume that the legislature expressed its intent and that it intended what it expressed

when it amended §69 from its 2014 predecessor. Only when intent cannot be ascertained from the plain meaning of the statutory language, *i.e.* cases of ambiguity or conflict, are rules of statutory construction necessary. When statutory language is plain and clearly expresses the legislative will, no further or additional inquiry is necessary. *Cattlemen's Steakhouse, Inc. v. Waldenville*, 2013 OK 95 ¶ 14, 318 P.3d 1105, 1109-10. The word "or" in the current statute clearly differentiates between the limitations period for cases where no benefit has been issued and those cases where the employee has received benefits under the AWCA. *See Carney v. DirectTV Group, Inc.*, 2014 OK CIV APP 4, f.n.4, 316 P.3d 234, f.n.4 and 1A *Sutherland Statutory Construction* §21:14 (7th ed.)

The Legislature intentionally changed the Statute of Limitations period from the prior periods outlined in the previous version of 85A O.S. 2014 §69(A) and (B). The prior limitations statute treated cases where no compensation had been paid separately and distinctly from those cases where compensation had been paid. This distinction between the two (2) types of cases was carried over into the 2019 amendments. However, with the 2019 amendment, the Legislature combined the prior periods found in §§ (A) and (B) and consolidated those prior statutes into one (1) section currently found in §69(A)(1). Use of the word "or" in the current statute is used to continue and carry over the distinction between the two different and distinct cases, like the previous sections (A) and (B) did in the prior statute. It is used to express and separate the limitations period for cases where benefits were not received from those cases where benefits were received. *Id.*

When one compares the legislative amendments to §69 found in the 2019 enactment from its predecessor, it is clear that the legislature completely abrogated the limitations period set out in prior Subsection B (those cases where benefits had been received or paid). The

2019 amendments not only changed the SOL time limits, but it intentionally removed the language "whichever is greater" from the 2019 enactment.

If, as Claimant argues, the issuance of benefits tolls the limitations period stated in the first part of the statute, the legislature could have simply used the word "and" instead of the word "or." By using the word "and" which connotes another time period *in addition* to the time period set forth in the first part, Claimant's argument and interpretation would be supported. However, by using the word "or" to separate the two (2) distinct time periods, the legislature clearly intended to keep the types of cases separate and change the previous statute. A clear reading of the statutory language must be applied.

Additionally, if the legislature did not intend to change the SOL for cases where benefits had been issued, it could have very easily kept the words "whichever is greater" in the 2019 amendment. The legislature obviously intended to remove that language from the current limitations period as evidenced by the legislative process of the 2019 enactment. Otherwise, the legislature would have left that language in the 2019 amendments since that language was contained in the prior statute and was recommended in the HB2367 House Engrossed Version. However, the recommendation to keep the language "whichever is greater" was specifically deleted by HB2367 Senate Committee Substitute and survived the legislative reconciliation process. To now add that language *back into* the current statute, as Judge Inhofe has done, usurps the power of the Legislature and undermines the clear legislative intent to change the prior statute and shorten the SOL period for cases where benefits have been issued.

We must presume that the legislature expressed its intent and that it intended what it expressed when it amended §69 from its 2014 predecessor and failed to keep language that

would have *clearly* and *plainly* extended or tolled the one (1) year statute for cases where benefits have been issued.

Failure to apply the current statute as it is clearly written also goes against the long-standing principle that amendments to a statute reasonably indicate a legislative intent to alter the law where the law was clear regarding the provisions prior to the amendment. *See, Special Indemnity Fund v. Figgins,* 1992 OK 59 ¶ 8, 831 P.2d 1379. This Court has also found that when a statute is amended, the legislature either (a) meant to effect a change in the existing law, or (b) intended to clarify law that previously appeared doubtful. *Arrow Tool & Gauge v. Mead,* 200 OK 86 ¶15, 16 P.3d 1120, 1125-26 citing, *Haney v. State*, 1993 OK 41, ¶12, 850 P.2d 1087, 1091; *Magnolia Pipe Line Co. v. Okla. Tax Comm'n*, 1946 OK 113, ¶11, 167 P.2d 884, 888.

Since the original 2014 limitations statute was amended by the legislature in 2019, then one of the above reasons for the change must apply. The earlier 2014 statute was undoubtedly clear as to its intent and application, therefore it must be assumed that the legislature intended to change that existing law, which it obviously did in the current statute. There is no ambiguity and the statute as written is clear as to the legislative intent.

When ascertaining legislative intent, the entire AWCA must be reviewed in light of its general purpose and objectives. *Odom v. Penske Truck Leasing Co.*, 2018 OK 23 ¶ 18, 415 P.3d 521, 528. The 2014 enactment of the AWCA not only shortened SOL timeframes, but it also shortened the maximum period for Temporary Total Disability benefits, the time a claimant has to reopen a case for a change of condition, and the amount of time one has to pursue a case once filed. When reviewed as a whole against the AWCA, the legislative intent behind the 2019 enactment to the §69 SOL is clearly ascertainable. Just because prior

legislation was different or included other language does not make the current statute ambiguous or susceptible to more than one reasonable interpretation. It must be interpreted as clearly written and applied as the Legislature intended.

PROPOSITION II: THE WORKER'S COMPENSATION COMMISSION EXCEEDED ITS AUTHORITY BY FAILING TO APPLY THE 2019 LEGISLATIVE AMENDMENTS TO THE AWCA

This Commission was duty-bound to give effect to the legislative changes enacted by the 2019 amendments, not to amend, repeal, circumvent them or, to add language to the amendment which was intentionally deleted by the legislature. The Commission was completely without authority to rewrite or add language to the statute and failed to apply the current statute with its enacted amendments to the facts of this case.

> The plain meaning of a statute's language is conclusive except in the rare case when literal construction would produce a result demonstrably at odds with legislative intent. Also, a court is duty-bound to give effect to legislative acts, not to amend, repeal or circumvent them. A universally recognized principle in cases when a court is called on to interpret legislative enactments is that the court is without authority to rewrite a statute merely because the legislation does not comport with the court's conception of prudent public policy. *Fulsom v. Fulsom,* 2003 OK 96, ¶ 7, 81 P.3d 652 at 655.

Judge Inhofe outlined the issue by stating in her Order that the "salient issue is whether the language which gives six (6) months for filing from last issuance of benefits is intended to contract or expand the one-year Statute of Limitations outlined just before."[10] However,

[10] ROA, Doc.#14 "Miscellaneous Order" filed May 13, 2021, pg. 23

she failed to address or compare the prior statute of limitations periods found in 85A O.S. 2014 §69(A) and (B) to the legislative changes made by the enactment of HB2367 in 2019.

Judge Inhofe's analysis is also contradictory in that she states the word "or" can be "used to delineate expressions which can be taken together or individually" and then goes on to state that the Commission finds that the word "or" expresses "alternative statutes of limitations..." This is exactly Employer's argument and supports a finding that Claimant's claim for benefits was not timely filed. However, her analysis is additionally flawed when she states that although the statute expresses alternative statutes of limitations, the **claimant receives *"the benefit of whichever of those [alternate statutes of limitations] is longer."*** The legislature deleted that exact language, the "whichever is greater" language, from the prior statute! There is no basis for Judge Inhofe's finding and no case law or analysis to support adding language *back into* a statute that the legislature clearly and intentionally removed.

Claimant argued, and Judge Inhofe agreed, that the six (6) month SOL limitation should only apply in cases where benefits were received and only if it *extends* the SOL. Claimant and Judge Inhofe do not argue that the amount of time (six (6) months) is inapplicable, but that it is only inapplicable when applied to those cases where the result or outcome is not favorable to Claimant. There is no basis to support Judge Inhofe's interpretation or application of the SOL statute in that manner. As a matter of fact, this Court has found that the legislature may constitutionally shorten a statute of limitations and to do so is within its constitutional power. *Ellington v. Horwitz enterprises,* 2003 OK 37. By enacting the amendments to the previous version of §69 SOL, the legislature has constitutionally exercised its authority to shorten the SOL period for all injured workers who

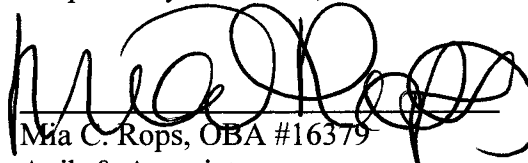
have received benefits under the AWCA. The wisdom or policy of the legislation is of no concern, but only whether the legislature has the power or authority to enact the same. *Rivas v. Parkland Manor,* 2000 OK 68, citing, *Adams* v. *Iten Biscuit Co.,* 1917 OK 47, 162 P. 938, *See also, Orcutt v. Lloyd Richards Personnel Service,* 2010 OK CIV APP 77, 239 P.3d 479. It is for the legislature, not the courts, to determine the advantages and disadvantages of new legislation. *Williamson v. Lee Optical of Oklahoma,* 348 U.S. 483, 487 (1955)

Conclusion

Based on the above arguments and well-established law, Employer respectfully requests that this Court apply the 2019 amendments to the SOL time periods as clearly written and intended by the Legislature, thus providing a six (6) month SOL for cases where benefits have been received. The Commission exceeded its authority by interpreting and adding language to the SOL that the Legislature intentionally removed. Since Claimant did not file his claim until almost ten (10) months after issuance of the last benefit, his case was not timely filed and Employer's SOL defense should be sustained.

Employer requests any other benefit which this Court deems proper and necessary.

Respectfully submitted,



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