



Workers' Compensation Report

Bradford J. Peterson

Heyl, Royster, Voelker & Allen, P.C., Urbana

Circuit Court Lacks Jurisdiction Over Common Law Fraud Claims Where Arbitrator Previously Ruled on Fraud Defense

In *ABF Freight System, Inc. v. Fretts*, 2015 IL App (3d) 130663, the Illinois Appellate Court, Third District addressed the issue of whether the circuit court had jurisdiction to hear common law fraud claims relating to workers' compensation benefits where the arbitrator previously ruled that the employer had not proven that the employee committed a fraudulent act. *ABF Freight*, 2015 IL App (3d) 130663, ¶6.

In 2009, Dennis Fretts filed two workers' compensation claims against his employer, ABF Trucking, alleging right shoulder injuries. *Id.* ¶3. Fretts was placed on restricted duty and ABF began paying temporary total disability benefits through September 15, 2011. *Id.* On September 15, 2011, ABF conducted surveillance on Fretts, which showed him lifting weights at a local gym. Furthermore, ABF also received information that Fretts was driving and receiving compensation from another trucking company, Havener Enterprises. *Id.* ¶4. Thereafter, on May 7, 2012, ABF brought a motion before the Commission for a determination of workers' compensation fraud. *Id.* ¶5.

ABF asserted that Fretts made knowing misrepresentations regarding his injuries, made knowing misrepresentations regarding the extent of his shoulder injuries and his ability to work, and was driving for Havener Enterprises. *Id.* ABF further alleged that Fretts made false and material statements regarding the nature and extent of his injuries and physical limitations. *Id.* On May 14, 2012, one week after ABF filed the workers' compensation motion, ABF also filed a civil complaint alleging that Fretts had fraudulently obtained TTD benefits while receiving compensation from another employer, made material misrepresentations to obtain insurance benefits, and committed workers' compensation fraud under §25.5 of the Workers' Compensation Act (Act), 820 ILCS 305/25.5. *Id.* at ¶7.

An arbitrator heard ABF's motion in August of 2012. *ABF Freight*, 2015 IL App (3d) 130663, ¶6. Fretts admitted that he worked for Havner for a couple of days driving a flatbed and a pickup truck to Louisiana. *Id.* However, the arbitrator concluded that a few days of light duty work did not constitute a stable labor market for purposes of determining TTD eligibility. *Id.* The arbitrator denied ABF's fraud claims, concluding that ABF failed to show any statement by Fretts that was both intentional and fraudulent regarding his working for Havner while collecting TTD. *Id.* The arbitrator also concluded that ABF had not proven by preponderance of the evidence that Fretts committed a fraudulent act. *Id.*

After the arbitrator had issued the decision in the workers' compensation case, ABF amended its circuit court complaint reducing its civil claims to two counts. *Id.* ¶8. Count I alleged insurance fraud under the criminal code (720 ILCS 5/17-10.5(e)(1)) and Count II alleged common law fraud for misrepresentation. *ABF Freight*, 2015 IL App (3d) 130663, ¶8. ABF dropped the fraud claim brought under §25.5 of the Act.

Fretts moved to dismiss ABF's amended complaint, arguing that the claim was barred under the doctrines of *res judicata* and collateral estoppel, and further, that the circuit court lacked jurisdiction to hear fraud claims relating to workers' compensation cases. *Id.* ¶9. The circuit court dismissed ABF's amended complaint, finding that collateral estoppel barred the claims based upon the arbitrator's written order in the workers' compensation proceeding. *Id.*



¶10. The appellate court affirmed, but did not need to address the issue of collateral estoppel as it found that the circuit court lacked jurisdiction to hear the complaint. *Id.* ¶21.

The appellate court noted that generally, the circuit courts do not have original jurisdiction in cases involving factual determinations regarding workers' compensation benefits. *Id.* ¶16. However, where a question of law exists, the circuit court and the Commission have concurrent jurisdiction. *Id.* ¶15. The appellate court then analyzed the jurisdiction issue, noting that the relevant inquiry is whether the issues in the case involve questions of law or factual issues related to the workers' compensation accident, the nature or extent of injury, or potential defenses to the workers' compensation claim. *Id.* ¶18. Where the issues raise a question of fact related to payment of workers' compensation benefits, the circuit court's role is "appellate only." *Id.*

The appellate court concluded that the circuit court complaint alleged theories of insurance fraud and common law fraud, which present questions of fact regarding the existence of Fretts' injury and his representations to medical personnel regarding his injury both before and during the workers' compensation proceeding. *Id.* ¶19. The appellate court concluded that those are questions of fact, which the Commission is in the best position to address. *Id.* ¶19. The appellate court concluded that the arbitrator had properly exercised jurisdiction over the fraud claims, which involved factual issues related to the employee's workers' compensation benefits. Accordingly, the circuit court lacked jurisdiction to hear ABF's fraud complaint. *Id.* ¶19.

The appellate court distinguished the case of *Smalley Steel Ring Co. v. Illinois Workers' Compensation Comm'n*, 386 Ill. App. 3d 993 (2d Dist. 2008) in which the circuit court was found to have jurisdiction to hear fraud allegations that arose subsequent to an arbitrator's decision. *ABF Freight*, 2015 IL App (3d) 130663, ¶20. The appellate court noted that in *Smalley*, the fraud was not discovered until after the workers' compensation decision was entered and the arbitrator had no authority to recall his decision to address the allegations of fraud discovered post-hearing. *Id.* The appellate court then stated that "where evidence of fraud is discovered after the arbitrator's decision, the appropriate forum to address the issue is in the trial court." *Id.*

The ABF decision illustrates the importance of bringing forth all available evidence of fraud during arbitration proceedings. Without a finding of fraud before the Commission the respondent will effectively be barred from seeking common law remedies for fraud.

The possibility remains that a criminal referral for fraud under §25.5 of the Act could still be prosecuted notwithstanding a contrary decision by the arbitrator. The jurisdictional bar raised in the *ABF Freight* decision should not constitute a bar to criminal prosecution under §25.5. Furthermore, doctrines of collateral estoppel and *res judicata* should not bar such criminal prosecutions as there would not be an identity of parties in the two proceedings. Practically speaking, however, it would be very unlikely for the fraud unit to make a criminal prosecution referral if the arbitrator and/or Commission did not make a finding of fraud.

About the Author

Bradford J. Peterson is a partner in the Urbana office of *Heyl, Royster, Voelker & Allen, P.C.* Mr. Peterson concentrates his practice in the defense of workers' compensation, construction litigation, auto liability, premises liability, and insurance coverage issues. In recent years, Mr. Peterson has become a leader in the field on issues of Medicare Set Aside trusts and workers' compensation claims. He has written and spoken frequently on the issue. He was one of the first attorneys in the State of Illinois to publish an article regarding the application of the Medicare Secondary Payer Act



to workers' compensation claims, "Medicare, Workers' Compensation and Set Aside Trusts," *Southern Illinois Law Journal* (2002).

About the IDC

The Illinois Association Defense Trial Counsel (IDC) is the premier association of attorneys in Illinois who devote a substantial portion their practice to the representation of business, corporate, insurance, professional and other individual defendants in civil litigation. For more information on the IDC, visit us on the web at www.iadtc.org or contact us at PO Box 588, Rochester, IL 62563-0588, 217-498-2649, 800-232-0169, idc@iadtc.org.