

Supreme Court Case Number SC-2018-01

IN THE SUPREME COURT OF THE CHEROKEE NATION

STANLEY JOHN
CLAIMANT/APPELLEE

vs.

CHEROKEE NATION and the THE HUDSON INSURANCE COMPANY
RESPONDENTS/APPELLANTS

DISTRICT COURT CASE NUMBER: CV-2016-640

REPLY BRIEF OF CHEROKEE NATION/HUDSON
INSURANCE COMPANY

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IN THE SUPREME COURT OF THE CHEROKEE NATION

STANLEY JOHN,

Claimant,

v.

Case No. SC-2018-01

CHEROKEE NATION,

Respondent,

HUDSON INSURANCE COMPANY,

Insurance
Carrier.

REPLY BRIEF

COME NOW the Respondent, CHEROKEE NATION, and its insurance carrier, THE HUDSON INSURANCE COMPANY, with their Reply Brief. Cherokee Nation and the Hudson Insurance Company will be referred to as “Cherokee”. The claimant will be referred to as “John”. This Reply is in response to John’s Answer Brief filed June 12, 2018 regarding Cherokee’s appeal of the award of TTD.

REPLY PROPOSITION ONE

**RES JUDICATA APPLIES TO DENY THE AWARD OF TTD FOR A PERIOD OF
TIME PREVIOUSLY ADJUDICATED**

It is not in dispute the John asked for the same TTD benefit twice, and it is not in dispute he asked for those same benefits based upon the medical evidence of Dr. Basener.

At the first Arbitration the claimant requested TTD as follows:

We’re asking for temporary total disability benefits from Cherokee Nation *from April 15th, 2015 to present and continuing*. Mr. Johns (sic), the claimant, has a recommendation for treatment by Dr. Basener, who he has seen, and that

treatment includes surgery to the right knee. We're asking for medical treatment, ***along with the TTD in accordance with Dr. Basener's recommendations.*** (emphasis added)(9/10/15 A.T. P. 8, L. 7)

That request was made at Arbitration on September 10, 2015, in the middle of the period of time requested.

The original Order provides:

The Nation is ordered to provide the above-mentioned medical treatment and to pay eight weeks of Temporary Total Disability to the Claimant (\$3,968.99 – all of which has accrued) and is to pay additional Temporary Total Disability benefits – if medically necessary following any surgery. (Arbitration Order dated 9/11/15)

Surgery, of Course was provided in December. The arbitrator did not “reserve” any other period of time for TTD to be adjudicated at a later date. The request was made and ruled upon by the Arbitrator. Arbitrator Seagle did not award the total time period requested, just a portion of the period requested. The only variable at that time was the date of surgery, which turned out to be December 2, 2015. But the period was clearly defined by Arbitrator Seagle, and not appealed by John. The adjudication of the TTD from April 15, 2015 to December 2, 2015 became a final order and a definitive adjudication of the issue.

Furthermore, any ordinary interpretation of the Arbitrator's Order indicates there are two periods of time to be paid, eight weeks in a lump sum and then TTD following any surgery-after surgery. John argues in his Answer the Arbitrator meant to say Cherokee had to pay eight weeks, and then after surgery pay any other period of TTD owed, including the period before surgery. No rational interpretation of the Order would indicate that is what the Arbitrator meant.

At the second arbitration, John requested TTD for the same exact time period at issue before this Court. John did not state new facts or new evidence existed to justify the request.

Indeed, at the first Arbitration John clearly stated he wanted the TTD based upon the medical evidence of Dr. Basener. At the second hearing John requested:

But with regards to the request for additional TTD, we are asking those benefits to run *from April 15, 2015 to 12/2/2015* less the eight weeks that was ordered to be paid. (emphasis added)(8/24/16 A.T. at P. 6, L. 6)

When comparing the request for TTD in both Arbitrations it is unequivocally clear John asked for the same benefit, TTD, for the same exact time period, April 15, 2015 forward, based upon the same medical evidence-that of Dr. Basener. The first Arbitrator ruled on the time period in question, and that ruling was not appealed. The Arbitrator did not reserve the issue for future adjudication. This is a clear case in which Res Judicata applies to bar the second award for the same benefit.

CONCLUSION

Arbitrator Otteson-Gosa's Order of November 7, 2016 is improper in that it awards TTD benefits for a period of time previously adjudicated, violating the legal principle of Res Judicata.

WHEREFORE, for the reasons stated above, Cherokee requests this Court reverse, vacate, or modify the Order, and to award any other relief as this Court deems appropriate.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of July 2018, a true and correct copy of the above and foregoing Reply Brief has been mailed to the following persons:

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JAY L. JONES