

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joel S. Ario,
Acting Insurance Commissioner of the
Commonwealth of Pennsylvania,
Plaintiff

v.

Reliance Insurance Company,
Defendant

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: No. 269 M.D. 2001

2008 MAY 14 10 03 AM
OFFICE OF THE CLERK OF THE COURT


IN RE: Order Approving Referee O’Keeffe’s Order in POC No. 1293613

ORDER

AND NOW, this 15th day of May 2008, the Court has given consideration to the decision of Referee O’Keeffe recommending approval of the Liquidator’s decision. The Court notes that no objection to the recommended decision has been received, and the Court does CONFIRM and ACCEPT the decision of Referee O’Keeffe attached hereto and marked as “Referee Decision Exhibit A.”

A copy of this Order shall be served by the Liquidator upon all listed on the Master Service List. Thereafter, an affidavit of service shall be filed with the Court.

By the Court:


JAMES GARDNER COLINS, Senior Judge

In The Commonwealth Court of Pennsylvania

JOEL S. ARIO, INSURANCE : DOCKET NO. 269 MD 2001
COMMISSIONER OF THE COMMON- :
WEALTH OF PENNSYLVANIA :
Plaintiff :
V. :
RELIANCE INSURANCE COMPANY :
Defendant : Proof of Claim No. 1293613

REFEREE'S REPORT AND RECOMMENDATION

PROCEDURAL HISTORY

This matter arises out of a claim by Freddie Sam against the Reliance Insurance Company. On May 29, 2001, the Commonwealth Court placed Reliance into Rehabilitation, and into Liquidation on October 3, 2001. Freddie Sam timely filed a Proof of Claim. On August 14, 2006, the Liquidator filed a Notice of Determination assigning priority level (b) to Mr. Sam's claim, and valuating the claim at zero.

Claimant filed an Objection to the Notice of Determination on September 4, 2007 and the undersigned was selected as Referee. On November 16, 2007, the undersigned sent notice to all of the parties providing them with additional time to submit any additional material and/or argument.

"Referee Decision Exhibit A"

DISCUSSION

Freddie Sam filed a proof of claim contending that he had been injured while working for Midwest Mechanical Corporation in Texas on July 28, 1995 and further alleging that he was entitled to 100% disability for seven years. The records disclose that Mr. Sam filed a worker's compensation claim and was paid indemnity benefits from August 23, 1995 through July 19, 1996 in the amount of \$20, 521.26 and medical benefits through 2005 in the amount of \$49,339.99, through a third-party administrator, on behalf of the employer. The policy, written by Reliance had a deductible endorsement, wherein the employer is responsible for the first \$250,000.00 per accident. As Mr. Sam has not yet come close to reaching the deductible amount, his claim should be with the employer, not the Liquidator. The total amount of payments made is \$69,861.25.

Furthermore, Mr. Sam's treating physician, Rosemary Buckle, M.D. placed Claimant at his "maximum medical improvement" with an impairment rating of six percent. If Mr. Sam does not agree with the impairment rating, his remedy was to file a claim with the Texas Worker's Compensation Commission.

RECOMMENDATION

Based on the foregoing, it is recommended that the objection of Freddie Sam to the Notice of Determination assigning class (b) priority level to the claim, but evaluating the claim at zero should be dismissed as the deductible threshold has not been met by Claimant.

Notice is hereby given that any objections to this Report and Recommendation must be filed with the Commonwealth Court within thirty days of the date of this Report.

Respectfully submitted,

Date: April 24, 2008

A handwritten signature in black ink, appearing to read "J. Scott O'Keefe", is written over a horizontal line. The signature is stylized and cursive.

J. Scott O'Keefe, Referee

In The Commonwealth Court of Pennsylvania


M. DIANE KOKEN, INSURANCE : DOCKET NO. 269 MD 2001
COMMISSIONER OF THE COMMON- :
WEALTH OF PENNSYLVANIA :
Plaintiff :
V. :
RELIANCE INSURANCE COMPANY :
Defendant : Proof of Claim No. 701160

CERTIFICATE OF SERVICE

J. Scott O'Keefe, Esquire hereby certifies that he caused to be mailed, by first class mail, a copy of the Report and Recommendation regarding Proof of Claim Number 701160 to the persons listed below, this 24th day of April, 2008.

Mr. Freddie Sam
3606 Yosemite Street
Houston, TX 77021-4720

S. Emily Poulard, Esquire
Reliance Insurance Company
Three Parkway
Phila., PA 19102



J. Scott O'Keefe
Referee