

TENTH APPELLATE DISTRICT

State ex rel. RMA Services Ltd., :
Relator, :
v. : No. 08AP-1004
Ohio Bureau of Workers' Compensation : (REGULAR CALENDAR)
et al., :
Respondents. :
:

D E C I S I O N

Rendered on March 18, 2010

Elliott P. Geller, for relator.

Richard Cordray, Attorney General, and *Gerald H. Waterman*,
for respondents Ohio Bureau of Workers' Compensation and
Marsha Ryan, Administrator.

Brendan J. Keating, for respondents Benefit Management
Services of Ohio, Robert Carr, and Ohio Chamber Alliance.

IN MANDAMUS
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

BROWN, J.

{¶1} Relator, RMA Services, Ltd., has filed this original action requesting that this court issue a writ of mandamus ordering respondent, Ohio Bureau of Workers'

Compensation ("bureau"), to vacate its order denying relator's request to participate in group rating for the rating period beginning July 1, 2005, and to enter an order granting relator's request.

{¶2} This matter was referred to a court-appointed magistrate pursuant to Civ.R. 53(C) and Loc.R. 12(M) of the Tenth District Court of Appeals. The magistrate issued a decision, including findings of fact and conclusions of law, which is appended to this decision, and recommended that this court deny relator's request for a writ of mandamus. Relator has filed objections to the magistrate's decision.

{¶3} Relator first presents several related arguments. Relator argues that the magistrate's sixth finding of fact simply restates allegations from the brief of Robert Carr, Benefit Management Services of Ohio ("BMSO"), The Ohio Chamber Alliance ("TOCA"), respondents, and accepts the allegations as true without proof or presentation of a contract. Relator also argues that the magistrate's fifth and ninth findings of fact are quotes from documents without clear denotation of the facts contained therein. Relator further argues that the magistrate's eleventh finding of fact merely quotes a letter from Robert Carr, in which he states there was a "clerical error," while the magistrate never explored or explained whether there was, indeed, a clerical error.

{¶4} These arguments lack merit. In each of the instances above, it was clear that the magistrate was merely setting forth evidence as presented in the record. In findings five and six, the magistrate clearly attributes the quotes to the briefs of relator and BMSO, TOCA, and Carr, respectively. Findings five and six are simply reiterations of the arguments set forth by each party in their briefs. Similarly, finding nine consists of a quote in a letter from BMSO with no further findings related to such. Likewise, finding eleven

merely quotes a letter written by Carr without any further findings. We can find no error in the magistrate's mere recitation of the above quotes. In addition, despite relator's objection that the magistrate never explored whether there was a clerical error, the magistrate did indicate in finding seven that, contrary to what BMSO, Carr, and TOCA allege in their brief, there was no evidence in the record to show that BMSO's exclusion of relator from the group was due to a bureau clerical error. Therefore, these objections are overruled.

{¶5} Relator next argues the magistrate failed to find that BMSO, TOCA, and Carr were acting as agents in their activities on behalf of the bureau, as pleaded by relator and accepted by respondents. We fail to find any error. Initially, relator fails to cite where in the record respondents conceded they were acting as agents for the bureau. The bureau directs us to its answer to relator's amended complaint, in which it denies the agency relationship allegation in relator's amended complaint. Furthermore, BMSO and TOCA explicitly denied they are agents of the bureau in their respective answers to the amended complaint. In addition, as pointed out by the bureau, relator's brief submitted to the magistrate makes no mention of its contention that BMSO, TOCA or Carr were acting as the bureau's agents. Although relator's reply brief does make references to BMSO, TOCA, and Carr being agents of the bureau, there are no arguments made, authorities cited, or analysis undertaken in support of these statements, and we can find no authority to support relator's assertions. Therefore, we find the magistrate did not err in this respect, and this objection is overruled.

{¶6} Relator next argues that the magistrate erred when it relied upon *State ex rel. Capitol Materials Co. v. Ohio Bur. of Workers' Comp.*, 78 Ohio St.3d 298, 1997-Ohio-

3, in which the employers missed the deadline for inclusion in the group rating program. Relator contends *Capitol Materials* is distinguishable from the present case because the employers therein failed to complete the paperwork by the deadline, while relator completed all forms, paid the requested fees, and submitted all the necessary paperwork to the third-party administrator well before the deadline. We find this distinction does not affect the magistrate's reliance upon *Capitol* and its import to the circumstances of this case. The magistrate quoted and relied upon the following holding from *Capitol* at 301, which concerned former Ohio Adm.Code 4123-17-62(A):

The two employers missed the deadline for inclusion in the group rating program. Now demanding admittance, the employers cite the waiver language contained in Ohio Adm.Code 4123-17-62(A). That waiver, however, does not provide the relief that the employers seek. Again, the relevant provision reads:

"Individual employers who are not included on both the final group roster and the individual employer application by the application deadline will not be considered for the group plan for that policy year; however, the bureau may waive this requirement for good cause shown due to clerical or administrative error, *so long as no employer is added to a group after the application deadline.*" (Emphasis added.)

The bureau is permitted to waive the requirement that deals with the employer's dual inclusion on both the roster and application. This waiver allows the bureau, for good cause shown, to include an employer that was listed on only one of the required documents. It does not allow the bureau to waive the filing limitation and, in fact, expressly forbids it. The bureau did not, therefore, abuse its discretion in failing to permit the employers' belated entry into the rating group.

{¶7} Current Ohio Adm.Code 4123-17-62(A)(4) is similar to the former version discussed in *Capitol* and provides, in pertinent part:

Individual employers who are not included on the final group roster or do not have an individual employer application (AC-26) for the same group or another group sponsored by the same sponsoring organization on file by the application deadline will not be considered for the group plan for that policy year; however, the bureau may waive this requirement for good cause shown due to clerical or administrative error, so long as no employer is added to a group after the application deadline. All rosters, computer formats or typewritten, must be submitted by the application deadline.

{¶8} Both Ohio Adm.Code 4123-17-62(A)(4) and the Supreme Court of Ohio's holding in *Capitol* could be no clearer: no employer may be added to the group after the application deadline. Neither Ohio Adm.Code 4123-17-62(A)(4) nor the court in *Capitol* provide any exceptions to this rule, and relator directs us to no authority for that proposition. Therefore, this objection is overruled.

{¶9} Accordingly, after an examination of the magistrate's decision, an independent review of the evidence, pursuant to Civ.R. 53, and due consideration of relator's objections, we overrule the objections. Accordingly, we adopt the magistrate's decision with regard to the findings of fact and conclusions of law, and we deny relator's request for a writ of mandamus.

Objections overruled; writ of mandamus denied.

TYACK, P.J., and FRENCH, J., concur.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

[State ex rel.] RMA Services Ltd.,	:	
Relator,	:	
v.	:	No. 08AP-1004
Ohio Bureau of Workers' Compensation et al.,	:	(REGULAR CALENDAR)
Respondents.	:	

MAGISTRATE'S DECISION

Rendered on November 30, 2009

Elliott P. Geller, for relator.

Richard Cordray, Attorney General, and *Gerald H. Waterman*,
for respondents Ohio Bureau of Workers' Compensation and
Marsha Ryan, Administrator.

Brendan J. Keating, for respondents Benefit Management
Services of Ohio, Robert Carr, and Ohio Chamber Alliance.

IN MANDAMUS

{¶10} In this original action, relator, RMA Services, Ltd. ("RMA" or "relator"), requests a writ of mandamus ordering respondent Ohio Bureau of Workers'

Compensation ("bureau" or "respondent") to vacate its order denying relator's request to participate in group rating for the rating period beginning July 1, 2005, and to enter an order granting relator's request.

Findings of Fact:

{¶11} 1. Relator is an Ohio employer. Prior to the rating year beginning July 1, 2005, relator was a participant in a group administered by Sheakley Uniservice, Inc. ("Sheakley"). By letter dated January 31, 2005, relator was informed by Sheakley that it was "not eligible for continued participation in our group rating program for the 2005/06 plan year."

{¶12} 2. Respondent Benefit Management Services of Ohio ("BMSO") is in the business of providing services to employers as a third-party administrator managing their workers' compensation obligations.

{¶13} 3. Respondent Robert Carr ("Carr") is the president and chief executive officer ("CEO") of BMSO.

{¶14} 4. Respondent The Ohio Chamber Alliance ("TOCA") is a sponsoring organization for purposes of group rating under R.C. 4123.29.

{¶15} 5. According to relator:

RMA was approached and solicited to join the group rating program administered by BMSO and sponsored by Ohio Chamber Alliance. RMA signed and completed all forms provided and paid all fees requested in order to enroll in the group rating program at issue.

However, unbeknownst to RMA and through no fault of its own, all the necessary forms were not properly submitted to the Bureau and the BWC excluded RMA from the Group. * * *

(Relator's brief, at 1.)

{¶16} 6. According to BMSO, Carr and TOCA:

* * * BMSO alleges that pursuant to a contract between RMA and itself, RMA was intentionally excluded from the group as it was discovered that RMA carried a status of a Professional Employer Organization (PEO) by the BWC. * * * [P]ursuant to the contract executed by RMA and BMSO no employer carrying the designation of a PEO will be listed on the roster for group rating.

* * *

On December 27, 2004[,] RMA and BMSO entered into a Workers' Compensation Group Rating Plan Agreement. Therein[,] RMA stipulated that it was not classified as a PEO. * * * Prior to submitting the roster of employers for group rating plan acceptance, BMSO discovered that RMA was indeed listed as a PEO with the BWC. BMSO subsequently, pursuant to contract[,] excluded RMA from the list. Upon learning of their omission, RMA asserted that this classification of PEO was in error[.] * * *

* * *

* * * BMSO had every right to exclude RMA from the group rating roster due to their listed status as a PEO. Once RMA asserted that its status as a PEO was an error on the part of the BWC, BMSO appealed to have RMA included in the group due to a "clerical error", that is, a clerical error on the part of the BWC. BMSO does not deny, however, leaving RMA off of the roster. * * *

(Respondents' brief, at 1-2.)

{¶17} 7. Contrary to what respondents BMSO, Carr, and TOCA allege in their brief, there is no evidence in the record showing that BMSO's exclusion of RMA from the group was due to a bureau clerical error.

{¶18} 8. Pursuant to Ohio Adm.Code 4123-17-62(B), February 28, 2005 was the deadline for filing with the bureau an application for group coverage for the rating year beginning July 1, 2005.

{¶19} 9. By letter dated September 1, 2005, on relator's behalf, BMSO's "Group Rating Coordinator" requested of the bureau:

This letter will serve as a request to allow the above-referenced employer to be allowed to participate in the group rating program for the policy period 2005/2006. The above-referenced employer was inadvertently not placed on the group rating roster for the policy period 2005/2006 due to their PEO status.

{¶20} 10. By letter dated October 28, 2005, the bureau's group rating unit denied BMSO's request, on behalf of RMA. The letter states: "This policy was not on the roster of employer[s] to be included in the group for the 2005 rate year."

{¶21} 11. By letter dated January 25, 2006, on behalf of relator, BMSO President/CEO Robert Carr appealed the October 28, 2005 decision of the bureau's group rating unit to the bureau's adjudicating committee. In the letter, Carr states:

Due to a clerical error this employer was erroneously omitted from the group rating roster filed by The Ohio Chamber Alliance Group4A. Attached you will find a copy of the employer[']s AC-2 and AC-26 forms showing it was the employer[']s intent to participate as well as the Associations' intention to place this employer in a group rating program sponsored by TOCA for the 2005-2006 group rating program.

{¶22} Attached to the January 25, 2006 letter are bureau forms AC-2 and AC-26 as completed and signed by RMA Officer Raymond Miller on December 27, 2004. Each completed form contains a BMSO date stamp indicating receipt by BMSO on December 28, 2004. The AC-2 appoints BMSO as RMA's representative before the bureau. The AC-26 is, in effect, an application for a group rating.

{¶23} 12. Following a May 23, 2006 hearing, the bureau's adjudicating committee issued an order denying the employer's protest. The order explains:

The facts of this case are as follows: The employer was denied the privilege of participating in group rating for the July 1, 2005 rating period. The denial was based on Rule 4123-17-62(A)(4) and (E). This rule states that an employer will not be considered for a group if the employer is not listed on the sponsoring organization's final group roster at the application deadline.

The employer protested the denial and requested a hearing before the Adjudicating Committee.

* * *

The employer's representatives say the appeal was filed by Benefit Management Services of Ohio (BMSO), the employer's third-party administrator. The Ohio Chamber Alliance (TOCA) is the group's sponsoring organization. [RMA's counsel] expected a representative of either BMSO or TOCA to be at this hearing. [RMA's counsel] indicates that the employer took all necessary steps to be in the group, including paying the required fee. The employer's check was cashed. But the employer was excluded from the group because of an error by either BMSO or TOCA. The nature of the error is unclear.

BWC's representatives state that the employer was not on the final group roster and had not submitted an AC-26 prior to the application deadline; therefore, the employer was not allowed to participate in the group rating plan.

Section 4123-17-62(A)(4) of the Administrative Code provides, generally speaking, that an employer will not be considered for a group rating plan for that policy year if the employer is not included on the final group roster *or* has not submitted an AC-26 by the application deadline. The section goes on to provide that this requirement may be waived due to clerical error, "*so long as no employer is added to the group after the application deadline*". (Emphasis added.) The rule clearly intends that the employer must be included on the final group roster or have submitted an AC-26 by the application deadline in order for the bureau to waive the requirement due to a clerical error.

Based on the testimony at the hearing and the materials submitted with the protest, the Committee denies the employer's request to participate in a 2005 group rating plan.

{¶24} 13. Relator administratively appealed the order of the adjudicating committee to the administrator's designee pursuant to R.C. 4123.291.

{¶25} 14. Following a November 16, 2006 hearing, the administrator's designee issued an order stating:

* * * At issue before the Administrator's designee was the employer's denial into the group rating plan, because the employer was not submitted on the group's AC-25 roster. The group rating application deadline is February 28, for the 2005 group rating program. The employer was not listed on the final submission of the AC-25 roster of group members as submitted by the group. Therefore, the employer was denied group rating by the Risk Section and the Group Rating Review Committee.

* * *

The Administrator's Designee adopts the statement of facts contained in the order of the Adjudicating Committee.

Based on the testimony and other evidence presented at the hearing, the Administrator's Designee affirms the decision, findings, and rationale set forth in the order of the Adjudicating Committee. The exception to the rule permitting employers into the group after the deadline date includes situations where the employer was included on the roster or the application. In this case, the TPA failed to submit the employer's application nor did the TPA include the employer's name on the group roster. Because the employer's name was not on at least one of the necessary documents required for the group rating plan, this situation does not meet the exception contemplated by the rule.

{¶26} 15. On November 14, 2008, relator, RMA Services Ltd., filed this mandamus action.

Conclusions of Law:

{¶27} It is the magistrate's decision that this court deny relator's request for a writ of mandamus, as more fully explained below.

{¶28} R.C. 4123.29(A)(4) provides that the administrator of workers' compensation shall: "Offer to insure the obligations of employers under this chapter under a plan that groups, for rating purposes, employers, and pools the risk of the employers within the group."

{¶29} Supplementing the statute, Ohio Adm.Code 4123-17-62 provides the bureau's rules for the application for a group experience rating.

{¶30} Ohio Adm.Code 4123-17-62(A) provides that the sponsoring organization shall make application for group experience rating on a form provided by the bureau. Ohio Adm.Code 4123-17-62(A)(1) provides that the sponsoring organization shall identify each individual employer in the group on the AC-25 application. Thus, the group roster is contained in the AC-25. See Ohio Adm.Code 4123-17-62(A)(3)(b).

{¶31} Ohio Adm.Code 4123-17-62(A) also provides rules for the filing of the AC-26 which is the individual employer's application for group rating.

Ohio Adm.Code 4123-17-62(A)(4) provides:

* * * Individual employers who are not included on the final group roster or do not have an individual employer application (AC-26) for the same group or another group sponsored by the same sponsoring organization on file by the application deadline will not be considered for the group plan for that policy year; however, the bureau may waive this requirement for good cause shown due to clerical or administrative error, so long as no employer is added to a group after the application deadline. All rosters, computer formats or typewritten, must be submitted by the application deadline.

Ohio Adm.Code 4123-17-62(B) provides:

* * * For private employers, applications for group coverage shall be filed on or before the last business day of February of the year of the July 1 beginning date for the rating year.

{¶32} The issue here is whether the bureau abused its authority under Ohio Adm.Code 4123-17-62(A)(4) when it determined that it lacked authority to waive the deadline for the filing of the AC-26 application for group rating because relator was not included on the group roster nor was an AC-26 filed by the application deadline.

{¶33} Finding that the bureau did not abuse its authority under Ohio Adm.Code 4123-17-62(A)(4), it is the magistrate's decision that this court deny relator's request for a writ of mandamus, as more fully explained below.

{¶34} In *State ex rel. Capitol Materials Co. v. Ohio Bur. of Workers' Comp.* (1997), 78 Ohio St.3d 298, 301, the court had occasion to interpret and apply former Ohio Adm.Code 4123-17-62(A), which contained similar, but not identical, language found at current Ohio Adm.Code 4123-17-62(A)(4):

The two employers missed the deadline for inclusion in the group rating program. Now demanding admittance, the employers cite the waiver language contained in Ohio Adm.Code 4123-17-62(A). That waiver, however, does not provide the relief that the employers seek. Again, the relevant provision reads:

"Individual employers who are not included on both the final group roster and the individual employer application by the application deadline will not be considered for the group plan for that policy year; however, the bureau may waive this requirement for good cause shown due to clerical or administrative error, *so long as no employer is added to a group after the application deadline.*" (Emphasis added.)

The bureau is permitted to waive the requirement that deals with the employer's dual inclusion on both the roster and application. This waiver allows the bureau, for good cause shown, to include an employer that was listed on only one of the required documents. It does not allow the bureau to waive the filing limitation and, in fact, expressly forbids it. The bureau did not, therefore, abuse its discretion in failing to permit the employers' belated entry into the rating group.

{¶35} Here, the bureau correctly held that it lacked the authority to waive the filing deadline where, as of the filing deadline, relator was not included on the group roster (AC-25) nor had it filed the AC-26 application.

{¶36} The language of Ohio Adm.Code 4123-17-62(A)(4), as well as the court's analysis in *Capitol Materials*, fully supports the bureau's decision.

{¶37} Relator has failed to show a clear legal right to the relief it requests in mandamus. It has also failed to show that the bureau is under a clear legal duty to provide the relief requested.

{¶38} Accordingly, it is the magistrate's decision that this court deny relator's request for a writ of mandamus.

/s/ Kenneth W. Macke
KENNETH W. MACKE
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).