

Lagler v. Menard, Incorporated and Zurich American Insurance Co 2018 S.D. 53

Lagler injured her ankle at Menards. A physician assistant and doctor determined the ankle was sprained and not fractured. Lagler was fitted with a cast shoe/boot and continued to work. Lagler continued to have issues with the ankle and attended an appointment with an orthopedic surgeon. The orthopedic surgeon diagnosed her with compression fractures in her foot and kept her in the boot. This did not alleviate her issues, and the orthopedic surgeon could not understand why. The orthopedic surgeon referred Lagler to another orthopedic surgeon, and Lagler was diagnosed with a work-related tibial tendonitis and surgery was performed.

Lagler got a new boot but didn't get any better. She now had Achilles tendon problems and bursitis in her heel. The second orthopedic surgeon restricted her to sedentary work. He felt Lagler's heel bursitis came from a congenital deformity called "Haglund's deformity," which became symptomatic from the way she walked after she got her first boot (and therefore work-related). He wanted to do a second surgery; the claims adjuster for the workers' compensation carrier requested additional information from the orthopedic surgeon, which delayed approval of the surgery. Lagler filed a petition for hearing three weeks later.

Lagler felt better, but within six months had more swelling and pain, and both her surgeon and Dr. Blow, who reviewed her case, said she should be limited to 30 hours a week. Dr. Blow agreed her problems were work-related.

Lagler didn't work from September 2008 to April 2009. She had no health insurance and ended up losing her home. Her daughter gave her a home in Winner, and Lagler quit her job at Menards in Sioux Falls to move to Winner.

The matter was appealed to the South Dakota Supreme Court. The parties disputed whether Lagler was permanently and totally disabled, whether Lagler could receive a lump sum of benefits, whether she was Permanent Total Disability (PTD), whether Zurich's denial of benefits was "vexatious or without reasonable cause" so as to justify Zurich having to pay Lagler's attorney's fees, and whether prejudgment interest had been correctly calculated.

To get PTD, Lagler had to prove there was no "suitable" work available to her. The Employer said it had work available at its Sioux Falls store that would meet Lagler's restrictions, therefore Lagler couldn't be PTD. The Supreme Court agreed with the DLR determination that Winner (the town she moved to) and not Sioux Falls had become Lagler's "community." The statute in question requires a claimant to look for work within a 60-mile radius of the community Claimant lives. There were not any occupations in Winner that paid her the same wage as the job in Sioux Falls.

Employer further argued Lagler had relocated to Winner on purpose to "leave the labor market" in Sioux Falls (which would be a basis for denying PTD). The testimony showed, however, the reason for the move was not to avoid work. Rather, Lagler lost her Sioux Falls home and moved to Winner to live with her daughter. The Supreme Court stated Zurich's (Employer insurance carrier) decision to terminate wage loss benefits was a factor in Lagler losing her house.

Lagler was required to prove she had made a reasonable job search. Employer said she needed vocational expert testimony for that, but the Court disagreed. Lagler had looked at 30 jobs in Winner before moving and worked for considerably reduced hours at a couple of jobs in Winner (including hospital work which exceeded her restrictions). Therefore, she proved she had done a reasonable job search without the necessity of expert testimony. Lagler did have

expert testimony that vocational retraining wouldn't help her get suitable employment, which also must be proven.

Lagler could be awarded her attorney's fees, in addition to the benefits she received if Zurich's refusal to pay was "vexatious or without reasonable cause." "Without reasonable cause includes making "an inadequate investigation" of a claim. DLR found the denial reasonable based on the claimed conversation with Lagler's treating doctor's nurse, "Angie Roberts," saying Lagler's problems weren't work-related. The Supreme Court, however, sided with the Circuit Court's reversal of that finding. This "Angie Roberts" the adjuster claimed to have contacted didn't exist. In addition, the doctor that "Angie Roberts" would have worked for gave the opinion Lagler's injuries were work-related. Furthermore, the doctor had asked for approval to do surgery because he felt it was work-related. Lastly, there was no record of the conversation in any medical notes. When the adjuster decided to deny benefits, there was no MD opinion saying Lagler's condition was not work-related, added together, the Supreme Court believed DLR simply got their finding clearly wrong, and awarded attorney's fees.

The Supreme Court did not think Lagler had proven a lump sum award was in her best interest. They looked at various factors, including her plans for the money, and found she didn't need it for her lawyer fees and the Supreme Court had now granted those fees. Lagler had housing rent free, no dependents, and her investment plan had no guarantee of lasting for long, leaving her destitute.

DLR Comments

Injured workers who are forced to move to another community based on financial circumstances are not disqualifying themselves from permanent total disability benefits due to having "withdrawn from the labor force." The town to which they move becomes their "community" when deciding whether work is available to them.

Injured workers are not required to use vocational experts to prove a post-injury job search was reasonable. They do have to use such experts to prove retraining won't get them back to suitable work.

In general, lump sum benefits should not be allowed. The grant of lump sum benefits can be allowed based on a close review of the injured worker's circumstances and proposed financial plan.

Insurers are required to adequately investigate claims, including being able to prove whatever facts they relied on to the satisfaction of an outsider, and backing up medical decisions with a sufficiently founded medical opinion. If they do not do so, they run the risk of being responsible for paying the attorney fees an injured worker incurs to bring an administrative/circuit court action.