Would you like to share some of my attorney fees in Washington?

By Anna M. McFaul and Christy A. Doornink ■ October 12, 2018

Typically, parties are responsible for paying their own attorney's fees. There are some exceptions to this, such as when a person is forced to litigate to recover an award or when other persons or entities who want to share in the award must also share the responsibility for the attorney fees. An overlap of a claimant's receipt of both unemployment benefits and time loss compensation presents one of these situations. The Supreme Court of Washington recently addressed the possible reduction of attorney's fees from repayment of unemployment benefits when a worker later receives workers' compensation benefits.[1]

Mr. Belling was injured at work in 2005 and received regular time loss benefits under his workers' compensation claim until March 2011. In March 2011, the Department of Labor and Industries ended time loss benefits and closed the claim. Mr. Belling appealed closure of the claim to the Board of Industrial Insurance Appeals. Mr. Belling retained an attorney on a 30 percent contingency fee basis to litigate the Board appeal. While the Board appeal was pending, Mr. Belling applied for and began receiving unemployment benefits.

A year later, the Board reinstated workers' compensation benefits and awarded back benefits. Part of the workers' compensation benefits awarded was for days Mr. Belling had previously received unemployment benefits. The Employment Security Department demanded repayment for all unemployment benefits made for the days Mr. Belling was also awarded workers' compensation benefits to avoid duplicate benefits. Mr. Belling contended the unemployment benefits repayment should be reduced by a share of the legal expenses incurred in obtaining the workers' compensation benefits.

The Washington Supreme Court held that consideration must be made as to whether demanding repayment of unemployment benefits is fair. This includes consideration of whether equity and good conscience require legal fee sharing by the Employment Security Department. In this case, Mr. Belling did not specifically allege financial hardship as a basis for his request for reduction of the repayment request. The Court held that on these specific facts, the refusal to reduce the repayment by a share of legal expenses incurred in litigation of the workers' compensation claim was not in error. The Court signaled that the outcome may be different if the worker were to allege financial hardship would

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Sharing attorney fees (continued)

result if the repayment demand is not reduced.

A claims manager should be aware that to receive unemployment benefits, a worker must confirm his or her ability to work and that he or she is actively job searching. However, receipt of unemployment benefits does not necessarily mean a worker is employable for industrial insurance purposes. If a worker receives double benefits for a period of time, repayment (and potentially sharing of the worker's attorney's fees) will be determined on a case-by-case basis. This information should be considered when making claims processing determinations.

The attorneys at Reinisch Wilson and Weier have decades of experience in expertly handling complicated Washington and Oregon workers' compensation claims. If you have questions about the effects of unemployment benefits on a workers' compensation ■

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[1] *Christopher Belling v. Washington State Employment Security Department* (Oct. 4, 2018) Docket No. 95097-1.