

**LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS
TRIBAL COURT**

Court Mailing Address: 7500 Odawa Circle, Harbor Springs, MI 49740

Court Telephone No. (231) 242-1462



JUDITH KUEBLER,
Little Traverse Bay Bands resident,

Plaintiff,

-v.-

Case No. C-211-0815

ODAWA CASINO RESORT
a Little Traverse Bay Bands Corp.,

Hon. Allie Greenleaf Maldonado

Defendant.
_____ /

OPINION OF THE TRIBAL COURT
Concise Statement of the Issue Presented

Defendant, Odawa Casino Resort, filed a motion for judgment on the pleadings concerning Plaintiff's claim against it for unjust and unlawful determination on her worker's compensation benefits claim. Defendant argued that Plaintiff failed to file an appropriate pleading. Upon leave of the Court, Plaintiff replied with an amended pleading. In the same order granting Plaintiff leave to amend, the Court submitted a question to the parties asking them to each delineate the Court's scope of review in reviewing decisions of the Administrator. Following Plaintiff's and Defendant's timely submission of briefs in response to the question, the Court issued an order with the Court's resolution to the question, and it now elaborates on its reasoning.

Controlling or Most Important Authority

1. Waganising Odawak Statute 2013-005 Workers' Compensation Statute
2. Michigan Worker's Disability Compensation Act; MCL § 418.101 et. seq. (BL through P.A. 184 of the 2016 Legis. Sess. 1969).

Table of Authorities

Statutes

Workers' Compensation Statute, Wagonkising Odawak Statute 2013-005.

MCL § 418.101 et. seq. (BL through P.A. 184 of the 2016 Legis. Sess. 1969).

Cases

Jackson v. Sedgewick Claims Mgmt. Servs., Inc.

731 F.3d 556 (6th Cir. 2013).

Other Sources

Black's Law Dictionary (Bryan A. Garner et al. eds., West Group 8th ed. 2004).

SUMMARY OF ARGUMENT

The question of how far the Tribal Court's scope of review extends with respect to the Administrator's decisions in worker's compensation claims under LTBB WCS is a matter of first impression. Therefore, the Court has carefully analyzed LTBB WCS and consulted appropriate supplemental sources to interpret LTBB WCS § 25.

This Court finds that its scope of review is defined by its standard of review, found in LTBB WCS §25, which is a *de novo* standard of review customized for the Act's purposes. Under LTBB's worker's compensation statute (LTBB WCS), a *de novo* standard of review means that while the Administrator's findings and decisions on a worker's compensation claim are presumed to be correct, the appellant has the opportunity to rebut the Administrator's findings and decisions. This means that the appellant bears the burden of proving that the Administrator acted outside its power, or incorrectly construed the law, or failed to find the facts.

This standard of review is designed to serve equitable purposes, equity being a central concern of LTBB WCS explicitly and implicitly. Upholding equity is advisable as a matter of public policy, as the Administrator—facing a potential conflict of interest favorable to employers—could otherwise confer an unfair measure of power on employers.

Going forward, LTBB WCS's *de novo* standard of review will treat the Administrator's findings and decisions on a worker's compensation claim as *prima facie* valid, placing the burden of proof on the appellant. But the appellant and the Tribal Court may engage in discovery and new findings may be made. In making new findings, the Tribal Court's powers of discovery extend far beyond what they normally would, even in a *de novo* hearing. Additionally, the Tribal Court may review the existing record to determine if the Administrator abused its discretion. Any new findings and review may be used by the Court to interpret the law and come to an

equitable outcome. If findings made in review or in discovery and investigation satisfy the appellant's burden of proof, the Tribal Court will make its own decision. On the other hand, if findings in review or in discovery and investigation do not satisfy the appellant's burden of proof, the Tribal Court shall defer to the Administrator's decision.

In this matter, therefore, the Defendant's argument that the Tribal Court must defer to the decision of the Administrator fails, its motion for judgment on the pleadings is denied, and the case will proceed to a hearing in which the Court will exercise de novo review as provided in LTBB WCS unless the Parties negotiate a settlement before the hearing.

STATEMENT OF FACTS

On November 14, 2013, Plaintiff Judith Kuebler was injured while lifting 40-50 pound boxes from the top shelf of a walk-in freezer. Plaintiff Brief, Factual Background, ¶1. Plaintiff was required to move boxes from the shelf as part of her regular work duties for the Defendant, Odawa Casino Resort. *Id.* Plaintiff claimed she suffered injuries to her shoulder, back and ribs. *Id.* However, the Defendant alleges that the medical workup ultimately focused on the back—specifically, the thoracic spine—and not on the shoulder and ribs. Defendant Brief, Statement of Facts ¶1. Multiple physicians—including the Administrator's Independent Medical Examiners (IME)—confirmed changes in Kuebler's thoracic spine following the incident. They also determined the changes were a result of Kuebler's work-related injury. Plaintiff Brief, Factual Background, ¶2.

Following the diagnoses, Plaintiff was assigned to light duty work. Defendant Brief, Statement of Facts ¶2. On October 17, 2014, upon direction of the Administrator, an IME and "Consulting Physician" (as defined by LTBB WCS § 9(G)), Dr. David Frye, determined that Plaintiff's continuing thoracic spine complications were due to a preexisting condition. *Id.* Frye

noted that, while Plaintiff suffered a sprain or strain caused by the work incident, the work-related injury had since resolved. *Id.* Following Frye's determination, the Administrator notified Plaintiff that her claim for continuing benefits was denied. *Id.*

Plaintiff protested the Administrator's initial decision, and the Administrator responded by appointing another IME to evaluate Plaintiff's condition. *Id.* ¶3. On May 12, 2015, the second IME, Dr. Luders, conducted an independent examination of Plaintiff. Dr. Luders later came to the same conclusion as Dr. Frye, that any of Plaintiff's continuing spinal complications were not attributable to the work injury. *Id.* §4. The Administrator summarily denied Plaintiff's claim for a second time. *Id.* ¶5. Plaintiff appealed to this Court, arguing that the Administrator's decision was unjust and unlawful because it did not take into account her "Attending Physicians" (as defined by LTBB WCS § 3(A)) findings. Plaintiff Brief, Factual Background ¶3. Plaintiff contends that the Attending Physicians were in a better position to diagnose her than the IME's chosen by the Defendant's insurance company, i.e. the Administrator. *Id.* Defendant responded that the Administrator adequately fulfilled the mandates of LTBB WCS by consulting an IME before making its decision, and—upon request of Plaintiff—having a second IME make a new, independent determination upon which it based its decision.

ARGUMENT

I.

LTBB WCS § 25 establishes that the Tribal Court hears worker's compensation cases under a de novo standard of review, but from a position of initially assuming the Administrator's findings and decisions were correct. Workers' Compensation Statute, Wagankising Odawak Statute 2013-005 § 25. This scheme starts with § 25(A), which states plainly that the Tribal Court shall conduct a de novo hearing on the appeal *as provided* in the section. *Id.* 'De novo' takes on a different meaning in § 25(A) than it normally would. Black's Law Dictionary defines 'hearing de novo' as "a reviewing court's decision of a matter anew, giving no deference to a lower court's findings." 738 (Bryan A. Garner et al. eds., West Group 8th ed. 2004). This definition applied to our case would mean that the Administrator's decision would be given no deference. But this definition does not align with § 25. Rather, § 25(A) says that the court will hold a de novo hearing *as provided* by the section. The wording 'as provided' signals that the rest of the section construes a customized definition of de novo, carving out exceptions to its traditional meaning. Sections 25(B)-25(D), 25(F), and 25(H) describe the extent to which the section gives the Tribal Court de novo powers and additional powers afforded the Court. Additionally, 25(H) provides a limiting exception to the definition of 'de novo' by treating the Administrator's findings and decisions as prima facie valid. Section 25, therefore, outlines a customized 'de novo' standard of review.

Section 25(B) is the first provision describing what de novo review includes under LTBB WCS's de novo standard of review. Section 25(B) allows appellant and respondent to "cross-examine all witnesses and review all evidence of any nature," granted that the evidence is relevant. Such power is normally included under de novo review.

Section 25(C) continues to describe de novo review under the Act and is the first provision to give the Tribal Court additional powers. Section 25(C) gives the Tribal Court itself the right to cross-examine the claimant and witnesses, and to engage in discovery according to the Court's discretion. This provision adds to what would normally be authorized by de novo review, and it substantially increases the Tribal Court's power. It allows the Court to make its own inquiries that the parties might not otherwise introduce for various reasons.

Section 25(D) also expands the Tribal Court's de novo review powers by relaxing procedural requirements. It states that the Tribal Court shall not be bound by the rules of evidence or other formal rules of procedure, and that it may investigate in order to determine the substantial rights of the parties and carry out the spirit of the Chapter. Section 25(D)'s loose procedural requirements significantly increase the Tribal Court's ability to investigate. The section also signals that the Tribal Court is to act as a court of equity with its command to use its powers to carry out the "spirit of the chapter." Together § 25(B), § 25(C), and §25(D) construe the logistics of the Tribal Court's de novo review, giving the Court broader and new powers not normally enjoyed by a court reviewing a case de novo.

Section 25(F)(1) implies that the Tribal Court may use the tools provided in §§ 25(B)-25(D) to come to its own decision. The section affirms that the hearing allows the Court to determine "whether the claim is compensable or non-compensable." Hence, we may infer that the Court is authorized to come to its own decision, and is not required to defer to the Administrator.

Section 25's definition of 'de novo' under the statute is made complete with the 'prima facie' exception to de novo review it carves out in § 25(H). It states that "[i]n all proceedings before the Tribal Court, the findings and decisions of the Administrator shall be prima facie

correct.” No definition of ‘prima facie’ is supplied by the statute. Black’s Law Dictionary defines ‘prima facie’ as “[s]ufficient to establish a fact or raise a presumption unless disproved or rebutted.” West Group 8th ed. at 1228. In the adjudicatory proceeding, therefore, the Administrator’s decision is presumed to be correct *unless disproved or rebutted*.

II.

It is important to understand that § 25 structures a customized ‘de novo’ standard of review to serve equitable ends. The equitable intent of the legislature is evident throughout LTBB WCS both explicitly and implicitly, and through appropriate supplemental sources. Explicit evidence of such intent is found in § 25 and throughout the Act. Section 25 strives for equity through its de novo standard of review by balancing power between the appellant, the Administrator, and the Tribal Court. Explicit evidence of the legislature’s equitable intent is further found in LTBB WCS §§ 2, 7, 11, 12, and 13—sections demanding efficient and fair resolution of worker’s compensation claims. Implicit evidence of the legislature’s intent is present in §§ 23 and 24—sections which seek to equalize power between employers and employees and mitigate the possible adverse effects of the potential conflict of interest the Administrator faces. The Act also implies equitable aims as it authorizes the Court to reference the Michigan Worker’s Disability Compensation Act (MWDCA) act for aid in interpretation. Waganakising Odawak Statute 2013-005 § 4. This provision implies equitable aims because MWDCA was born out of concerns of equity and is structured to achieve equity.

Section 25 is the first provision explicitly aspiring to equity, balancing power between the appellant, the Administrator, and the Tribal Court with a customized de novo standard of review.

The standard of review balances power by giving the appellant and the Tribal Court extensive powers of review and discovery while simultaneously accepting the Administrator's findings and decisions as initially valid. Sections 25(C) and 25(D) afford the Court new powers of discovery and relax procedural barriers. Section 25(H) provides that the Administrator's decision on a claim will stand unless proven otherwise by a preponderance of the evidence. But 25(C) and 25(D) balance out with the Administrator's power as they give the Court ample opportunity to review the Administrator's findings and decisions. Therefore, to say that the Administrator's findings and decisions are considered prima facie correct is simply to say that before the Tribal Court and appellant have engaged in any new investigation and reviewed the evidence, the Administrator is presumed to have decided correctly. This does not mean that the Court must defer to the Administrator's findings and decisions. But new evidence must rebut the Administrator's findings and decisions enough to satisfy the appellant's burden of proving contrary findings and decisions by a preponderance of the evidence, or else the Administrator's findings and decisions will stand.

Section 25's equitable terms conform with the equitable intentions of the legislature expressed throughout the Act, in particular—§§ 2, 7, 11, 12, and 13. These sections express equitable goals insofar as they seek to make worker's compensation easily accessible while simultaneously protecting employers from tort claims and other abuses.

A number of equitable aims can be found express and inferred in §§ 2 and 11. In concert, §§ 2 and 11 state that worker's compensation, if warranted, is to be provided regardless of fault. Additionally, it is appropriate to infer from these provisions that LTBB WCS aims to provide injured employees easily and expediently accessible worker's compensation. We may draw another inference from § 11 as it requires claims to be reported promptly and to show that the

injury resulted from work-related activity within the scope of the worker's employment; the provision means to give employers protection from faulty claims. These sections are thus equitable because of they balance the interests of workers and employers.

Section 7 is similar to §§ 2 and 11 in requiring expedient processing of claims, but it also aims to provide for accurate evidence gathering to achieve the fairest resolution of claims. Section 7 requires supervisors to report employee injuries to the Administrator promptly, i.e. within seventy-two hours of receipt of notice of the injury. This provision thus strives form expedient claims processing; but we can further infer that it is designed to ensure that evidence is preserved as soon as possible to ensure that claims are decided according to the most accurate, clearest, and complete record. Such a record is fairest to both employers and workers.

Sections 12 and 13 go back to the pattern of §§ 2 and 11, aspiring to equity by balancing worker and employer interests. Section 12 supports employee interests, providing that *every worker*, or the worker's family, is entitled to benefits when the worker suffers a work-related injury. This provision supports the Act's goal of easily accessible worker's compensation. Section 13 counterbalances § 12, making worker's compensation an exclusive remedy to eliminate potential abuses of other forms of remedy such as tort claims that are uncondusive to sustainable business. Together, §§ 12 and 13 balance worker and employee interests.

Besides explicitly expressing equitable intentions, LTBB WCS implies equitable aims in §§ 23, 24 and § 4. These sections reiterate the aims expressly provided in the Act and also introduce their own additional aims. Section 23 implies equity by allowing a party aggrieved by the Administrator's decision to protest, balancing power between the Administrator and the aggrieved party, likely an employee. Upon protest, the Administrator is required to decide on the claim after review the whole record and any supplementary materials submitted by the protester.

The provision seems mainly designed to protect employees because the Administrator, hired out by employers, may have an incentive to deny claims. Thus, the provision works as a procedural requirement for the Administrator to take into consideration any supplementary materials and evidence the protester can produce. Such evidence could potentially be ignored on first review so that the Administrator could come to the decision the employer wants. This is possible because of the broad discretion the Administrator has in considering evidence initially as provided by §§ 9 and 16. Thus, § 23 protest means to give an aggrieved party (likely a worker) an opportunity for a complete review of the record and fair decision on a claim.

Section 24 gives an aggrieved party another outlet to seek fair resolution of a claim— appeal of the Administrator’s decision to the Tribal Court, which is to act as a court of equity. Though this section could be beneficial to any aggrieved party, it again seems primarily beneficial to the employee, because the Administrator’s potential conflict of interest remains problematic even upon protest. Although the Administrator must take into account all evidence submitted by a protester, it could potentially abuse its discretion in weighing the evidence. Section 24 ensures that the Court can review for such abuse. Section 24 further implies equity by ordering that appellant set forth in detail the grounds upon which “the Administrator’s decision was *unjust or unlawful*.” According to the rule against surplusage, the words ‘unjust’ and ‘unlawful’ must have different meanings to avoid redundancy. Black’s Law Dictionary defines ‘unjust’ as “contrary to justice; not just.” West Group 8th ed. at 1573. Meanwhile, it defines ‘just’ as “legally right; lawful; *equitable*.” Id. at 880 (emphasis added). Therefore, ‘unjust’ must mean ‘contrary to what is legally right, lawful, or equitable.’ Black’s Law dictionary defines ‘unlawful’ as “[n]ot authorized by law; illegal.” Id. at 1574. This definition limits ‘unlawful’ to encompass only that which is against the black-letter law. While ‘unjust’ could include what is

against the black letter law, to avoid surplusage in § 24, an alternative meaning must be adopted. This limits the definition of 'unjust' to 'contrary to what is equitable.' Thus, by requiring the appellant to set forth reasons why the Administrator's decision is unjust or unlawful, § 24 urges the appellant to argue that the decision was against black letter law (e.g. LTBB WCS), or inequitable, or both. From this we can infer that the Tribal Court is to act as a court of equity.

Finally, the implicit aims of LTBB WCS are evidenced in § 4, which authorizes the Court to look to MWDCa, a law born out of equity concerns, to aid in interpretation and enforcement. The equitable origins and inspiration of MWDCa are evident in MWDCa itself and case law. MWDCa sets up a tiered system of review to give workers numerous opportunities to have their claims reviewed to ensure that they are decided fairly. MCL § 418.101 et. seq. (BL through P.A. 184 of the 2016 Legis. Sess. 1969). Each entity of review in the scheme consists of highly qualified, independent officials well-suited to fairly assess claims, mitigating the chance that a reviewing body will house a preference toward either employees or employers. *Id.* Application of MWDCa in Michigan courts has been even more explicit about MWDCa's equitable purposes. For example, in Jackson v. Sedgewick Claims Mgmt. Servs., Inc., the court explained that MWDCa was adopted to create a no-fault system in which workers no longer needed to establish negligence on the employer's part to receive benefits. 731 F.3d 556, 559 (6th Cir. 2013). At the same time, the system made worker's compensation a worker's sole remedy. *Id.* Limiting workers' remedial options was necessary to avoid abuses and tort claims harmful to employers.

By comparing LTBB WCS to MWDCa, it is clear that LTBB WCS establishes the LTBB WCS as aimed at achieving equity. MWDCa's balancing of employer and employee interests, particularly the provision of no-fault benefits as an exclusive remedy, is reflected in

LTBB WCS §§ 2, 11, and 13. LTBB WCS's system is also similar to MWDCA insofar as it was meant to ensure efficient payment of benefits and dispute resolution. This efficiency concern hearkens back to LTBB WCS §7's requirement of prompt reporting to the Administrator. Efficient resolution is also implied in § 12's strong language, stating that benefits "shall be paid" in the event of a work-related injury. This not only parallels MWDCA in terms of efficient resolution, but also mirrors MWDCA's goal of providing easily accessible, no-fault benefits. Finally, § 13 limits recovery to worker's compensation, just as MWDCA. LTBB WCS and MWDCA are practically identical in the most substantive respects, and in their equitable aims.

III.

Interpreting § 25 as providing a de novo standard of review serving the Act's equitable ends comports with public policy. Such an interpretation protects against the potential conflict of interest the Administrator faces as an insurance company hired out by employers in worker's compensation disputes. If equity was not provided for by § 25, the Act would strongly favor the Administrator and employers. Section 25 does provide for equity, however, by giving the Tribal Court extensive review and discovery powers, and consequently gives the Administrator a counterincentive to decide claims fairly to avoid reversal on appeal.

Interpreting LTBB WCS to have equitable aims is necessary because of the problematic relational dynamic between the Administrator, employees, and employers, and the conflict of interest this results in for the Administrator. The Administrator has an incentive to favor employers, being an insurance company for the employers. On the other hand, the Administrator is supposed to be a neutral mediator between the employer and employee. The the potential for this conflict of interest to influence the Administrator's decisions is thus significant.

Thus, without the § 25's de novo powers to the Tribal Court, the Act would be biased toward the Administrator and employers, which would go against the Act's purposes and good public policy. This bias would result because the standard of review's prima facie provision would require such a level of deference to the Administrator that it would go unchecked. Section 25's de novo powers are thus necessarily stronger than those of its analogous entity under MWDC, the Michigan Court of Appeals, because LTBB WCS requires a greater check on the lower reviewing body. MWDC takes in claims through a highly qualified Magistrate Judge well-suited to act as a neutral mediator in these cases. MCL §§ 418.206, 418.210 (BL). In contrast, the Administrator is the entity to take in claims initially under LTBB WCS, and faces a potential conflict of interest unlike the Magistrate Judge. The Administrator is thus significantly less likely to remain independent without § 25's de novo powers in place. Wagankising Odawak Statute 2013-005 § 7.

The Tribal Court can fulfill the need for independent review with its de novo powers, and can also provide a counterincentive for the Administrator to fairly decide claims. Section 25 provides powers allowing the Tribal Court to find the law and what is equitable even if the Administrator or the parties do not. Knowing this, the Administrator would be wise to decide claims fairly to avoid reversal on appeal. This scheme provides for both efficiency and fairness, and is thus favorable in terms of public policy.

IV.

Having established that the Tribal Court exercises a customized de novo standard of review, an explanation of how this standard works logistically is in order. The Administrator's findings and decisions will be considered prima facie correct, placing the burden of proof on the

appellant. The appellant's burden to prove its case by a preponderance of the evidence may be satisfied on two fronts—by review of the record, by new findings.

The Tribal Court is to review the Administrator's records on the claim according to LTBB WCS § 24 to certify their accuracy, and the Administrator must furnish the existing record to the Court. Reviewing the record addresses equity concerns because of the possibility that the Administrator abused its discretion on weighing the findings, and the Court must be able to review for such abuses. Findings that the Administrator abused its discretion will move toward satisfying the appellant's burden of proof, and the Court will decide if the findings are sufficient for it to come to a new decision. An absence of such findings will leave the Administrator's decision standing, unless new discovery and findings rebut the presumption that the Administrator decided correctly.

The appellant's and the Tribal Court's new findings and discovery may also satisfy the appellant's burden of proof per LTBB WCS § 25. Allowing new discovery and findings is necessary to achieve equity given that the Administrator has such great discretion at its level of review that would allow it to make a decision based on an incomplete record. Wagankising Odawak Statute 2013-005 §§ 9, 16. Finding that the record was incomplete to the detriment of the appellant will move toward satisfying the appellant's burden of proof, and the Court will decide if the new findings are sufficient for it to come to its own decision. Finding that the record was complete or only incomplete in a way not detrimental to the appellant will leave the Administrator's decision standing, unless a review of the whole record is sufficient to rebut the presumption that Administrator decided correctly.

To conclude the trial, the Tribal Court shall weigh the final record considering both the law and equity. The Court may adopt the Administrator's decision or come to its own decision.

CONCLUSION

LTBB WCS § 25 establishes that the Tribal Court exercises a de novo standard of review, and it customizes the definition for its purposes. The customized definition serves the equitable purposes of LTBB WCS as it allows the Court to act as a neutral mediator through substantial powers of review and discovery, and if warranted, by allowing it to come to a decision different from the Administrator's.

THEREFORE, IT IS SO ORDERED:

1. Defendant's motion for judgment on the pleading is denied; and
2. The case has been set for a new pre-trial conference.

7/5/16
Date

Allie Greenleaf Maldonado, LTBB Chief Judge

CERTIFICATE OF MAILING

I certify that on this date copies of this Order were served to the parties by First-Class Mail.

July 6, 2016
Date

Tribal Court Officer

Certification of Service

I certify that a copy of the Opinion of the Tribal Court was served upon the following parties:

-By First Class Mail

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