TRAVELERS INDEMNITY COMPANY, APPELLEE, V. GRIDIRON MANAGEMENT GROUP, APPELLANT.

794 N.W.2d 143

Filed February 11, 2011. No. S-10-068.

1. **Administrative Law: Judgments: Appeal and Error.** A judgment or final order rendered by a district court in a judicial review pursuant to the Administrative Procedure Act may be reversed, vacated, or modified by an appellate court for errors appearing on the record. When reviewing an order of a district court under the Administrative Procedure Act for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable.
2. **Judgments: Appeal and Error.** Whether a decision conforms to law is by definition a question of law, in connection with which an appellate court reaches a conclusion independent of that reached by the lower court.
3. **Administrative Law: Statutes: Appeal and Error.** To the extent that the meaning and interpretation of statutes and regulations are involved, questions of law are presented, in connection with which an appellate court has an obligation to reach an independent conclusion irrespective of the decision made by the court below.
4. **Constitutional Law: Due Process.** The determination of whether the procedures afforded an individual comport with constitutional requirements for procedural due process presents a question of law.
5. **Judgments: Appeal and Error.** On a question of law, an appellate court is obligated to reach a conclusion independent of the court below.
6. **Statutes: Intent.** When construing a statute, a court must look at the statutory objective to be accomplished, the problem to be remedied, or the purpose to be served, and then place on the statute a reasonable construction which best achieves the purpose of the statute, rather than a construction defeating the statutory purpose.
7. **Constitutional Law: Statutes.** It is the duty of a court to give a statute an interpretation that meets constitutional requirements if it can reasonably be done.
8. **Statutes: Legislature: Intent.** Components of a series or collection of statutes pertaining to a certain subject matter are in pari materia and should be conjunctively considered and construed to determine the intent of the Legislature, so that different provisions are consistent, harmonious, and sensible.
9. **Administrative Law: Due Process: Notice.** Generally, under due process principles, the notice of an administrative agency hearing should inform a party of the issues involved in order to prevent surprise at the hearing and allow that party an opportunity to prepare.

Appeal from the District Court for Lancaster County: KAREN B. FLOWERS, Judge. Affirmed.

Michael J. Mullen, of Burns Law Firm, for appellant.

CeCelia C. Ibson, of Ibson Law Firm, for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

MILLER-LERMAN, J.

NATURE OF THE CASE

This case involves the proper notice procedure to be used by the Nebraska Department of Insurance (Department) when setting a disputed experience rating to be applied to workers' compensation insurance. Following several lower level administrative proceedings, the Department set a hearing to determine what experience rating the football operation Gridiron Management Group (Gridiron), appellant, should be assigned in connection with the workers' compensation insurance it was to receive from Travelers Indemnity Company (Travelers), appellee. The hearing was sought by Gridiron. Although its interest had been represented below, Travelers was not formally notified of the Department hearing, the outcome of which was contained in a January 21, 2009, decision and was favorable to Gridiron and unfavorable to Travelers.

Travelers appealed the Department's decision to the district court for Lancaster County under Neb. Rev. Stat. § 84-917 (Cum. Supp. 2010) of the Administrative Procedure Act. Travelers claimed, inter alia, that because of lack of notice, the Department's decision should be set aside and the matter remanded to the Department with instructions to give proper statutory notice under Neb. Rev. Stat. § 44-7532 (Reissue 2004) to all interested parties, including Travelers, and to thereafter conduct a new hearing. The district court agreed with Travelers' assertion that it should have been notified. The district court set aside the Department's decision and remanded the matter to the Department with directions to hold a new hearing giving Travelers notice and an opportunity to be heard.

Gridiron appeals and claims that because Travelers had learned through informal communication of Gridiron's appeal, statutory notice was not required. We reject Gridiron's argument and agree with the district court's decision that proper notice was lacking. Accordingly, we affirm.

STATEMENT OF FACTS

Gridiron acquired the football operation assets of Omaha Beef, LLC, on January 1, 2008. In early 2008, Gridiron applied for workers' compensation insurance from Travelers. Gridiron had not previously obtained workers' compensation insurance and, therefore, had not previously been assigned an experience rating. A company's experience rating is used by Travelers to set premiums. In determining an insured's experience rating, Travelers uses the National Council of Compensation Insurance (Council). The Council is a rating organization licensed in, and authorized by, the State of Nebraska to make and file rules, rating values, classifications, and rating plans for workers' compensation insurance.

After applying for coverage, Gridiron was assigned an experience rating by the Council. In assigning Gridiron an experience rating, the Council noted that effective January 1, 2008, Gridiron had acquired the assets and business of Omaha Beef. The Council determined that the two entities were combinable for experience rating purposes and assigned Gridiron the experience rating previously held by Omaha Beef, 2.27, rather than the experience rating given to a new company, 1.0. The higher experience rating translates into higher premiums being paid by Gridiron.

Gridiron appealed the assignment first to the Council's appeal panel. Gridiron disputed the experience rating assignment for a variety of reasons, all to the effect that Gridiron ran the football operation in a manner that differed from Omaha Beef. After an August 22, 2008, telephone conference, the Council's appeal panel affirmed the decision.

Next, Gridiron appealed the decision of the Council's appeal panel to the Department. On October 30, 2008, at a prehearing conference, the Department ordered that Gridiron's appeal be heard commencing on November 12. Travelers was not a participant at the prehearing conference. The certificate of service of the prehearing conference order setting the hearing shows service on only counsel for Gridiron.

At the hearing on November 12, 2008, Gridiron was the only party to participate. The Council's participation in the hearing was limited to providing background information. At

the hearing, the Department determined that the only issue for determination by the Department was whether Gridiron was combinable with Omaha Beef for workers' compensation experience rating purposes. The Department concluded that Gridiron was not a successor entity to Omaha Beef and that Gridiron should have been assigned an experience modification rating of 1.0, as a new and independent company, rather than the 2.27 experience rating assigned by the Council. The Department's January 21, 2009, findings, conclusions, and 8-page written order were served on only Gridiron.

Travelers learned of the Department's ruling and appealed the Department's decision to the district court for Lancaster County pursuant to § 84-917 of the Administrative Procedure Act. Travelers claimed that under the procedural provisions of § 44-7532, it was entitled to notice of the hearing before the Department, and that it had not received proper notice. Travelers sought, inter alia, to set aside the Department's decision.

The district court held a hearing. At the hearing, Travelers acknowledged that it had learned informally that an appeal to the Department would take place in the future but indicated that it did not receive statutory notice of the appeal. It is undisputed that statutory notice under § 44-7532 was not given by the Department to Travelers. Gridiron took the position that because Travelers had been aware of the existence of Gridiron's appeal, Travelers had chosen not to attend, and that Travelers suffered no prejudice attributable to the lack of formal notice.

On December 17, 2009, the district court filed an order in which it noted that § 44-7532 provides that "notice of the hearing [shall] be given to all interested parties and state the time, place, and purpose of the hearing." (Emphasis in original.) The district court concluded that "[t]here can be no doubt that Travelers is an interested party." The district court further determined that the record showed that Travelers had not received notice of the hearing "as required by statute [§ 44-7532] and that the hearing was conducted without giving [Travelers] an opportunity to participate." Accordingly, the district court set aside the January 21 Department decision and remanded the

matter to the Department with directions to hold a new hearing giving Travelers notice and an opportunity to present evidence and be heard. Gridiron appeals.

For completeness, we note that elsewhere in the district court's order, it dismissed the Department, which had been named as a party to the district court action. No issue is before us on appeal with respect to this ruling.

ASSIGNMENT OF ERROR

Gridiron claims, summarized and restated, that the district court erred when it determined that Travelers was not given adequate notice of the hearing before the Department and thus erred when it set aside the decision of the Department and remanded the matter to the Department for a new hearing giving Travelers statutory notice and an opportunity to be heard.

STANDARDS OF REVIEW

[1] A judgment or final order rendered by a district court in a judicial review pursuant to the Administrative Procedure Act may be reversed, vacated, or modified by an appellate court for errors appearing on the record. When reviewing an order of a district court under the Administrative Procedure Act for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. *Children's Hospital v. State*, 278 Neb. 187, 768 N.W.2d 442 (2009).

[2] Whether a decision conforms to law is by definition a question of law, in connection with which an appellate court reaches a conclusion independent of that reached by the lower court. *Id.*

[3] To the extent that the meaning and interpretation of statutes and regulations are involved, questions of law are presented, in connection with which an appellate court has an obligation to reach an independent conclusion irrespective of the decision made by the court below. *Id.*

[4,5] The determination of whether the procedures afforded an individual comport with constitutional requirements for procedural due process presents a question of law. *Scott v. County of Richardson*, 280 Neb. 694, 789 N.W.2d 44 (2010).

On a question of law, an appellate court is obligated to reach a conclusion independent of the court below. *Id.*

ANALYSIS

On appeal to this court, Gridiron challenges the district court's order setting aside the decision of the Department and remanding this matter to the Department with directions to hold a new hearing giving Travelers notice and an opportunity to present evidence and be heard. Gridiron argues that Travelers had adequate notice of the hearing. Gridiron specifically relies on the fact that Travelers knew of the existence of Gridiron's appeal as shown by Travelers' comments before the district court to the effect that it was aware that Gridiron had appealed the Department's order.

In response, Travelers argues that the Department failed to comply with the notice provisions of § 44-7532 and that as a result, Travelers did not participate in the hearing and was denied procedural due process. Accordingly, Travelers claims that the district court did not err when it set aside the Department's order and remanded the matter. We agree with Travelers.

In its order, the district court noted that the dispute concerned the premium to be paid for workers' compensation insurance and that there had been a series of administrative appeals. The case before the district court was an extension of those appeals, and the district court stated that "it is fair to say that Travelers and Gridiron are the only interested parties." The district court concluded that under § 44-7532, Travelers was an interested party to the proceedings before the Department and that the Department erred when it failed to give Travelers statutory notice of the hearing and an opportunity to be heard.

In addressing whether Travelers received sufficient notice, we must consider both the statutory notice of hearing requirements and the constitutional requirements for procedural due process. The statutes quoted below are relevant to our analysis. Neb. Rev. Stat. § 44-7508(5) (Reissue 2004) states: "An insurer may authorize the director to accept rating system filings and prospective loss cost filings made on its behalf by an advisory organization. The insurer shall file additional

information as is necessary to complete its rating systems on file with the director."

Neb. Rev. Stat. § 44-7517 (Reissue 2004) states:

> Within a reasonable time after receiving a written request and after receiving payment of such reasonable charge as it may require, every insurer and advisory organization shall furnish all pertinent information to any insured affected by a rate, premium, or prospective loss cost made by the insurer or advisory organization. Upon written request, every insurer and advisory organization shall provide within this state reasonable means by which the insured aggrieved by the application of the advisory organization's or insurer's rating system may be heard, in person or by an authorized representative, to review the manner in which such rating system has been applied in connection with the insurance afforded the insured. If the insurer or advisory organization fails to act upon such request within thirty days after it is made, the applicant may proceed in the same manner as if the application had been rejected. An insured affected by the action of the insurer or advisory organization on such request may appeal to the director within thirty days after written notice of such action. The director, after a hearing held in accordance with section 44-7532, may affirm the action of the insurer or advisory organization or order remedial action to be undertaken by the insurer or advisory organization.

Neb. Rev. Stat. § 44-7531 (Reissue 2004) states:

> Any insurer, joint underwriting pool, joint reinsurance pool, statistical agent, or advisory organization aggrieved by any order or decision of the director made without a hearing may, within thirty days after notice of the order, make written request to the director for a hearing thereon in accordance with section 44-7532. Pending such hearing and decision, the director may suspend the effective date of his or her action.

Section 44-7532 states in part:

> If a hearing is held at the request of a party other than the director, unless mutually agreed upon by the

> director and all interested parties, notice of hearing shall be provided within thirty days after the director's receipt of a written request for a hearing. Notice of hearing shall be given to all interested parties and shall state the time, place, and purpose of the hearing. Unless mutually agreed upon by the director and all interested parties, the hearing shall be held not less than ten days after notice is served.

[6-8] When construing a statute, a court must look at the statutory objective to be accomplished, the problem to be remedied, or the purpose to be served, and then place on the statute a reasonable construction which best achieves the purpose of the statute, rather than a construction defeating the statutory purpose. *State v. Arterburn*, 276 Neb. 47, 751 N.W.2d 157 (2008). It is the duty of a court to give a statute an interpretation that meets constitutional requirements if it can reasonably be done. *Id.* Components of a series or collection of statutes pertaining to a certain subject matter are in pari materia and should be conjunctively considered and construed to determine the intent of the Legislature, so that different provisions are consistent, harmonious, and sensible. *Davio v. Nebraska Dept. of Health & Human Servs.*, 280 Neb. 263, 786 N.W.2d 655 (2010).

In reviewing the structure and process established by these statutes taken together, it is clear that the Legislature contemplated that the insurer, its authorized agent, and the insured would all be involved in the process of establishing and, if necessary, challenging an insured's workers' compensation experience rating. The Legislature provided a process for each entity to address or challenge a decision by which it was aggrieved.

The process begins with § 44-7508, which allows the insurer to authorize the Council to determine the appropriate rate for an insured. Section 44-7517 provides that once the rate is set, the Council and the insurer must provide the insured a reasonable way to object to the rate and further provides that if the insured is not satisfied with this result, the insured can appeal to the Department. If the Department fails to hold a hearing

on a disputed matter brought by an insurer (or other entity), § 44-7531 provides for the manner in which an insurer may make a request for a Department hearing to be held in accordance with the notice provisions of § 44-7532 to challenge the decision. Where the Department holds a hearing at the request of a party other than the Department, as was the case in the present action, § 44-7532 requires that "[n]otice of hearing shall be given to all interested parties and shall state the time, place, and purpose of the hearing."

We note that under § 44-7517, an "aggrieved" insured may seek a Department hearing under the procedures set forth in §§ 44-7531 and 44-7532; an "aggrieved" insurer may similarly seek a hearing under § 44-7532. It is clear that the language in § 44-7532 referring to notice to "all interested parties" contemplates notice by the Department to both the insured and the insurer regarding the adversarial proceeding to come. It would not be a sensible reading of the statutes to require notice to only one of the parties, where both parties are active in the proceeding but seek different outcomes.

Based on the process established by the statutes, we conclude that the relevant statutory provisions, when read together, contemplate that the insured and insurer are interested in this process and, as such, are "interested parties" under § 44-7532, entitled to formal notice by the Department of the hearing, including "the time, place and purpose of the hearing." We read § 44-7532 in context and conclude that notice of the Department hearing should be of record and, contrary to Gridiron's suggestion, that casual or informal notice is not anticipated by § 44-7532 and is not sufficient.

[9] With respect to constitutional notice requirements, we have explained that generally, under due process principles, the notice of an administrative agency hearing should inform a party of the issues involved in order to prevent surprise at the hearing and allow that party an opportunity to prepare. See, generally, *Lariat Club v. Nebraska Liquor Control Comm.*, 267 Neb. 179, 673 N.W.2d 29 (2004). See, also, *Goldberg v. Kelly*, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d (1970). We read § 44-7532 as contemplating these constitutional notice

requirements as well as an opportunity to the parties to be heard and present evidence. So read, the notice requirements of § 44-7532 are constitutionally satisfactory.

Under § 44-7532, it is the responsibility of the Department to provide all interested parties with formal notice of the time, place, and subject matter to be considered at the hearing, as well as a hearing which provides an opportunity to be heard. Contrary to Gridiron's suggestion, it was not incumbent on Travelers to seek out the details of an upcoming appeal which it may have learned about informally. The prehearing conference order setting the hearing date was not served on Travelers. The district court did not err when it determined that "Travelers did not receive notice as required by statute."

CONCLUSION

The Department failed to give Travelers, an interested party, formal notice of Gridiron's appeal as required by § 44-7532. Accordingly, we affirm the district court's order which vacated the decision of the Department and remanded the matter for a new hearing providing Travelers with notice and an opportunity to present evidence and be heard.

AFFIRMED.

IN RE ESTATE OF DARLEEN F. CRAVEN, DECEASED. COUNTY OF LANCASTER, NEBRASKA, APPELLANT, V. UNION BANK & TRUST COMPANY, TRUSTEE AND PERSONAL REPRESENTATIVE OF THE ESTATE OF DARLEEN F. CRAVEN, APPELLEE.

794 N.W.2d 406

Filed February 11, 2011. No. S-10-393.

1. **Decedents' Estates: Taxation: Appeal and Error.** The scope of review in an appeal of an inheritance tax determination is review for error appearing on the record.
2. **Judgments: Appeal and Error.** When reviewing a judgment for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable.