

Administrative and Evidentiary Issues

Wyoming Workers' Compensation Symposium #4

Jumping Off Point

- Workers' compensation provides cash/indemnity and medical benefits to workers suffering injury by accident arising out of and in the course of employment: Concept arose in Europe
- Workers' compensation is not a social welfare benefit program; it is the *quid pro quo* for workers' giving up tort claims against their employers:
 - Workers give up tort rights get smaller but certain recoveries
 - Employers lose tort defenses but are insulated from tort damages
- The *quid pro quo* involved no relinquishment of ***Constitutional*** rights, nor as a product of statute could it have done so

The Broadest Topic We Have Broached in Symposia

- Context = The emergence of workers' compensation
- Began as court-based system both in fact finding and appellate review
- Earliest prototypical statute – probably English Act in 1897
 - No administrative agency
 - System of “arbitrators” (like special masters) and physicians employed directly by the English Gov't
 - Early recognition that courts required specialist support – for reasons of efficiency and expertise

Emergence of Administrative Agencies

- Many were titled “Commissions” or “Industrial Accident Boards”
- Some established findings of fact/first level adjudications in “district” courts, or their equivalent
- Some required these adjudications be done in “arbitration committees” whose findings could be reviewed by full commissions or Boards
- Some structured first-level fact findings that were conducted **directly** by Commissions
- Tremendous variability (See Bradbury’s Workmen’s Compensation Law, Banks Law Publishing Co., 1917)

Administrative Workers' Compensation Internal/External Structural Issues

- Internal: Like an informal little court?
 - Pre-trial – timeliness of agency action; internal process; ADR; **status of rules** generally?
 - What evidentiary rules must agency observe at trial level?
 - Rules of evidence apply? Most places “no” but some surprising places, “yes” – **Residuum Rule**
 - Conflicting medical evidence
 - Neutral medical structures (IME/Neutral Commission/Neutral Panel)
 - Derogation of hearing official control of proceedings?

Second Structural Issue

- External: Judicial Review Like review of Trial Court?
 - Relationship between courts and agencies
 - How much deference should courts show to administrative decision making?
 - Question of **Standard of Review**

Standards of Review of Agency Decision Making

- Many states parallel the Federal APA:
- The reviewing court **shall— hold unlawful and set aside** agency action, findings, and conclusions found to be—
 - Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - Contrary to constitutional right, power, privilege, or immunity;
 - In excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 - Without observance of procedure required by law;
 - Unsupported by substantial evidence in a case subject to [formal adjudication]
 - Unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

Review of Fact Finding

- Historically, WC decisions upheld if supported by virtually any evidence [Larson's Section 130.01]
- Tension between *that* idea and administrative law “substantial evidence” rule: recent history suggests agency decisions meant to be subject to “reasonableness” review
- Ultimately, substantial evidence can mean very different things across jurisdictions
- Under “usual” substantial evidence rule agency decision may be reversed if it:
 - **Ignores facts** contrary to its own view
 - Renders **different decisions on identical facts**
 - **Disregards without explanation ALJ factual findings** on review that are based on **witness demeanor**

Review of Agency Statutory Interpretation

- *Chevron* deference very unevenly applied in the states
- Some states' constitutions call into question whether it can be applied

Administrative Exhaustion

- Most decisions of agencies involve *informal* adjudications
- Final agency action in all cases (i.e., no access to courts)?
- Or opportunity for judicial review after administrative exhaustion?

Perennial “Administrative” Issue: Attorney’s Fees

- Majority rule: Each party pays its own lawyer, win or lose
- Another approach: shift the burden of the claimant’s attorneys’ fees to someone other than the claimant
- Most states fix maximum fees by statute, sometimes accompanied by general agency supervision of fees, but they vary significantly
- What makes fees an administrative issue?: if not strictly governed by statute, *administrative agency may have discretion* to set fees
- Constitutional issues in recent years: Who governs fee setting – legislatures, agencies, or courts? [Utah] Must attorneys’ fees be “reasonable”? [Florida]