COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 039951-95**

Christopher Gonsalves	Employee
IGS Store Fixtures, Inc.	Employer
Liberty Mutual Ins. Co.	Insurer

REVIEWING BOARD DECISION
(Judges Levine, Carroll and Maze-Rothstein)

APPEARANCES
Scott D. Goldberg, Esq., for the Employee at hearing and on brief
Donald L. Pitman, III, Esq., for the Employee on brief
Gerard A. Pugsley, Esq., for the Insurer

LEVINE, J. The employee appeals the decision of an administrative judge which denied his claim that the insurer violated G.L. c. 152, § 14(1), by its refusal to accept liability for the employee's claimed industrial injury.[1] After review and reconsideration, we decline to follow our previous interpretation of the phrase "reasonable grounds" as appearing in § 14(1), and we recommit the decision of the administrative judge for further findings consistent with this opinion.

At the time of the hearing, the employee was a twenty-three year old single male who resided with his mother in Medford, Massachusetts. He completed high school and had attended several semesters of college, last attending North Shore Community College in 1994. His prior work experience consists of catering, masonry and roofing. (Dec. 1.)

[1] Section 14(1) states, in pertinent part, that " . . . if any administrative judge . . . determines that any proceedings have been . . . defended by an insurer without reasonable grounds" it shall be liable for certain costs and penalties. (emphasis added.) As amended by St. 1991, c. 398, § 36.

In January, 1995, Mr. Gonsalves commenced employment with IGS Store Fixtures as a general laborer. (Id.) This position involved heavy lifting, sometimes with the assistance of other employees or mechanical devices such as a forklift. On August 17, 1995, while in the course of his employment, the employee was carrying a desk unit weighing several hundred pounds. The unit began to slip and the employee, while attempting to prevent the slip, heard a snap in his body; he felt pain in his stomach and back and had difficulty breathing. The occurrence was witnessed by several co-workers. One co-worker drove the employee to the East Boston Neighborhood Health Center, and the employee was then referred to the Massachusetts General Hospital. The employee was diagnosed with a hernia. That same day, the employee told his supervisor, Paul Woolbert, over the telephone that the injury was not related to work. Woolbert conveyed this information to the employer's accountant who handled insurance claims. (Dec. 7.) Several days later, the employee underwent a surgical procedure to repair the hernia. (Id.) As a result of complications, the employee underwent two subsequent procedures, one in December 1995 and the other in April 1996. The employee continued to experience tingling and burning sensations in his leg and pain in his back. (Id.)

Although the employee's claim form (Employee Exhibit #3) gave the names of witnesses to the alleged industrial injury, the insurer denied the claim primarily because the employer, through the employee's supervisor, Paul Woolbert, maintained that the injury was not work related. (Dec. 9.) The insurer denied the claim through conciliation and conference. During this time period, a field investigation was conducted on behalf of the insurer. The insurer's claims manager read the investigator's report, but he did not listen to the audio tapes or read the transcripts of the interviews of the

witnesses. (Dec. 10.) These witnesses, employee's co-workers, indicated there was an incident at work. (Dec.11.) Also during this time period, the insurer's doctor examined the employee and casually related the injury to the employee's work; however, this doctor suggested only a closed period of benefits; the employee sought on-going weekly benefits. (Dec. 10-11.) By the time of the conference, the insurer's claims representative was no longer contesting causal relationship and liability; nevertheless, at the conference the insurer raised those issues. (Dec. 11-12.) The employee was not paid any workers' compensation benefits, nor were any medical bills paid prior to the issuance of a conference order on January 19, 1996. (Dec. 7.) The conference order awarded those benefits, but it also denied the employee's claim under § 14(1); the employee appealed that denial and a de novo hearing was held on that claim. (Dec. 3.)

The administrative judge addressed the employee's claim that the insurer defended his claim "without reasonable grounds." G. L. c. 152, § 14(1). The judge noted that the reviewing board in Brown v. MCI-Norfolk, 10 Mass. Workers' Comp. Rep. 58 (1996), in analyzing the scope of § 14's prohibition against prosecuting or defending claims without reasonable grounds, looked to G.L. c. 231, § 6F, for guidance. (Dec. 15.) That statute provides that in any civil action counsel fees and costs may be assessed against a party prosecuting or defending claims "that are found to be 'wholly insubstantial, frivolous and not advanced in good faith.'" Brown, supra at 60, quoting § 6F. Brown cited the Supreme Judicial Court's interpretation of the "good faith" component of that statute: "an absence of malice, an absence of design to defraud or to seek an unconscionable advantage." Hahn v. Planning Bd. of Stoughton, 403 Mass. 332, 337 (1988).[2]

Using the analysis set out in Brown, the judge concluded:

[2] The Brown decision also referred to "fraud, ill will or insincerity." Brown, supra.

> Consistent with the testimony of all the parties and the actions taken by Insurer, I find that its conduct was not unreasonable or unconscionable and not designed to defray or delay costs, that the grounds were thin, i.e., barely meeting the standard of a "scintilla of evidence" or "any evidence," but nonetheless sufficient in that the claim representative exercised his judgment using the information he had, including information that Employee said contemporaneously with the incident, i.e., with[in] the same day or two, which was not disputed, that it was not work related. While I find there is merit to Employee's claim that Insurer's defense was not based on reasonable grounds, I am not persuaded that the Insurer acted in bad faith, i.e., that the conduct was not reasonable under the facts of this case. Rather, I find [the claim representative's] handling of the case, at worst, was based on poor judgment rather than an absence of good faith, insincerity or ill will. Therefore, I find under these facts Employee is not entitled to double back benefits under Section 14(1).

(Dec. 16.)

On appeal, the employee contends that the statutory phrase, "without reasonable grounds," as appearing in § 14(1), does not require proof of subjective "bad faith" or "ill will" on the part of the insurer's representative; he contends instead that an objective standard applies.[3] The employee thereby challenges our reasoning in Brown, supra. We now agree with the employee and decline to follow our interpretation of § 14 as set out in Brown, supra. We therefore reverse the present decision and recommit the case for further findings consistent with our interpretation of § 14 that follows.

In Brown, we decided that the § 14 sanction against claims being brought or defended without reasonable grounds should be analyzed using the standards applicable for G.L. c. 231, § 6F, as set out above ("wholly insubstantial, frivolous and not advanced in good faith"). The language in § 6F includes a "good faith" component, a subjective standard interpreted to be "an absence of malice, an absence of design to defraud or to seek an unconscionable advantage." Hahn, supra. In Brown we reversed the judge's award of a § 14 penalty, because we

[3] While not a model of clarity, the just-quoted passage from the administrative judge's decision fairly reads that the judge considered the insurer's good faith as she decided the employee's claim under § 14. See also Dec. 15.

could not "see that fraud, ill will or insincerity [was] exhibited" in that case. Brown, supra at 60. While we acknowledge the similarity of purpose of the two statutes, we now consider that there is a fundamental difference between the concepts of "reasonable grounds" appearing in § 14, and of "good faith" appearing in § 6F. And while the judge here appropriately looked to and applied the subjective standard that we set out in Brown, we now decline to follow that standard.[4]

"[I]n construing a statute its words must be given their plain and ordinary meaning according to the approved usage of language." Johnson's Case, 318 Mass. 741, 747 (1945). Thus, "reasonable grounds," as used in § 14, should be read with a view toward its traditional meaning. That is the objective, "cautious and prudent [person]" standard. Coblyn v. Kennedy's, Inc., 359 Mass. 319, 324 (1971). In Coblyn, the Supreme Judicial Court analyzed the statutory use of the "reasonable grounds" phrase in a case involving the civil false imprisonment statute, G.L. c. 231, § 94B. The court determined that "reasonable grounds" and "probable cause" had traditionally been accorded the same meaning by the courts. Id. at 323-324. As such, either conduct "'must be judged against an objective standard: would the facts available to the [actor] at the moment . . . warrant a [person] of reasonable caution in the belief that the action taken was appropriate.'" Id. at 325, quoting Terry v. Ohio, 392 U.S. 1, 21-22 (1968).

Defining "without reasonable grounds" by an objective standard does not mean that § 14(1) violations will be easy to prove. As the court apprised in Hubbard v. Beatty & Hyde, Inc., 343 Mass. 258, 262-263 (1961), a malicious prosecution case,

> [a]ll that is necessary [to pass judicial scrutiny], where civil proceedings are involved, is that the 'claimant reasonably believe that there is a chance that his claim be held valid upon adjudication.' Restatement: Torts, § 675, comment e. Were the rule otherwise, many honest litigants would be

[4] In Martineau v. Sheaffer Easton/Textron, 11 Mass. Workers' Comp. Rep. 12 (1997), decided after Brown, we stated that the "language of § 14 does not require conduct to be egregious." Id. at 15.

> deterred from invoking the aid of the courts for fear of subjecting themselves to a law suit in return. It is doubtless for this reason that it has been said that the action of malicious prosecution is 'not to be favored and ought not to be encouraged.' Wingersky v. E.E. Gray Co. 254 Mass. 198, 201-202.

The same cautious approach to finding that an insurer (or employee[5]) has proceeded without reasonable grounds, in violation of § 14, ought to apply in workers' compensation litigation. Nevertheless, the Legislature, faced with alternative ways of expressing a desire that workers' compensation litigants act responsibly, chose the phrase "reasonable grounds." By doing so, it intended an objective standard, the cautious and prudent person standard, as described in Coblyn, supra; it precluded an inquiry into subjective intent.[6, 7]

Given our adoption of the objective standard, we must reverse the denial of the employee's claim for § 14 sanctions since the subjective "good faith" standard was included in the judge's analysis. We recommit the case for further findings consistent with this opinion.

So ordered.

[5] See § 14(1)(b) para. 2.

[6] We find support for our interpretation of the phrase "reasonable grounds" as it appears in § 14(1) by language found in §§ 14(2) and (3). Those latter sections, setting out the criteria for finding fraud, speak in terms of an actor "knowingly" acting in various improper ways. Thus, unlike § 14(1), §§ 14(2) and (3) appear to require an examination of conduct based on a subjective standard.

[7] Contrast the use of the term "reasonable grounds" in § 14 with the term "good ground" appearing in Mass. R. Civ. P. 11(a)("[t]he signature of an attorney to a pleading constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information and belief there is a good ground to support it."). Our courts have interpreted "good ground" to include a subjective standard: that "pleadings be based on 'reasonable inquiry and an absence of bad faith.'" Doe v. Nutter, McLennen & Fish, 41 Mass. App. Ct. 137, 142 (1996). See also Van Christo Advertising, Inc. v. M/A Com/LCS, 426 Mass. 410, 416-417 (1998) (subjective good faith belief).

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Frederick E. Levine
Administrative Law Judge

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Susan Maze-Rothstein
Administrative Law Judge

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Martine Carroll
Administrative Law Judge

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