THE SUPREME COURT OF NEW HAMPSHIRE

Compensation Appeals Board
Case No. 2025-0416
Citation: Appeal of Comm'r of N.H. Dep't of Labor, 2026 N.H. 34

APPEAL OF THE COMMISSIONER OF THE NEW HAMPSHIRE DEPARTMENT OF LABOR
(New Hampshire Compensation Appeals Board)

Argued: April 7, 2026
Opinion Issued: September 3, 2026

John M. Formella, attorney general, and Anthony J. Galdieri, solicitor general (Mary A. Triick, senior assistant attorney general, on the brief and orally), for the petitioner.

Bernard & Merrill, PLLC, of Manchester (Michelle A. Broadhurst and Samantha G. Surowiec on the brief, and Michelle A. Broadhurst orally), for the respondent.

GOULD, J.

[¶1] The petitioner, the Commissioner of the New Hampshire Department of Labor (the Commissioner), appeals an order of the New Hampshire Compensation Appeals Board (CAB) granting the claim of the respondent, ESIS, Inc. (the Insurer), the former insurer of BAE Systems, Inc. (BAE),[1] for reimbursement from the Special Fund for Second Injuries (the Fund). See RSA 281-A:55 (2023). The sole issue on appeal is whether the Insurer provided the Commissioner with notice of its possible claim against the Fund within 100 weeks after the injury as required by RSA 281-A:55-a, II (2023). We hold that the Insurer did not provide the Commissioner with timely notice of its possible claim against the Fund. Accordingly, we reverse and remand.

I. Background

[¶2] The record reflects the following facts. An employee was injured on January 7, 2020, while employed by BAE. The employee was concurrently employed by another employer. The Insurer paid the employee workers' compensation benefits based upon her combined weekly wages from the two employers for whom she worked at the time of her injury. See RSA 281-A:15, III (2023).

[¶3] In 2020 and 2022, the Insurer filed memoranda of payment with the New Hampshire Department of Labor (DOL) documenting its payment of the employee's workers' compensation benefits. See RSA 281-A:40 (2023). Two of the memoranda contained handwritten notes indicating that the employee's average weekly wages were based upon "combined wages of BAE & [the other employer]" and providing the average weekly wages the employee was paid by each employer.

[¶4] On August 29, 2022, the Insurer applied for reimbursement from the Fund. At the time, more than 100 weeks had elapsed since the employee's injury in January of 2020. The Insurer sought reimbursement for the additional compensation it paid to the employee pursuant to RSA 281-A:15, III due to her concurrent employment. See RSA 281-A:15, III ("Any additional compensation resulting from the increase in average weekly wages due to the employee's concurrent employment shall be reimbursed by the special fund created under RSA 281-A:55."); see also RSA 281-A:55-a, I (2023).

[¶5] By letter dated September 8, 2022, the Fund coordinator notified the Insurer that its claim had been denied because the Insurer had failed to notify the Commissioner of any possible claim against the Fund within 100 weeks after the injury. See RSA 281-A:55-a, II; see also N.H. Admin. R., Lab 506.04(a). The Insurer asserted that the memoranda of payment provided the Commissioner with notice of its possible claim against the Fund. The Fund coordinator disagreed, however, concluding that the memoranda were insufficient to notify the Commissioner of the Insurer's possible claim against

[1] CorVel Corporation is defending this appeal as the third-party administrator for Indemnity Insurance Company of North America, BAE's current insurer. To simplify matters, we refer to both ESIS, Inc. and CorVel Corporation as the "Insurer" in this opinion.

the Fund because the memoranda "are only in regard to the insurance carrier's obligations to make indemnity payments to the injured worker, without reference to claim against the Special Injury fund." The Fund coordinator explained that "[t]here is nothing in the Memo[s] of Payment . . . that also notify of a potential claim against the Special Injury Fund."

[¶6] The Insurer requested a hearing at the DOL. See RSA 281-A:43, I(a) (2023). After a hearing, the hearing officer upheld the Fund coordinator's decision. The hearing officer concluded that the record contained no evidence that the Insurer had notified the Commissioner of its possible claim against the Fund. The hearing officer explained that "Memos of Payment, while informational, do not constitute notice to the commissioner or the Fund. To find otherwise would be to rewrite the statute to say that payment of combined earnings, approved by the DOL, constitutes notice to the fund, without more." That outcome, the hearing officer reasoned, would render the notice requirement in RSA 281-A:55-a, II superfluous.

[¶7] The Insurer appealed the hearing officer's decision to the CAB. See RSA 281-A:43, I(c) (2023). The parties agreed before the CAB that notice to the Commissioner "is a precondition to reimbursement from the Fund." After a hearing, the CAB reversed the hearing officer's decision. The CAB observed that "[i]t should be assumed" the DOL employee who received the memoranda of payment "would know or should have known that the double Memos were being submitted for purposes of such a claim even if he or she did not work directly in the Second Injury Fund department." The CAB cited no legal or factual basis for the assumption underlying its decision. The CAB concluded that "payment should be made by the Second Injury Fund to [the Insurer] for its claim." The Commissioner unsuccessfully moved for rehearing. This appeal followed.

II. Analysis

[¶8] On appeal, the Commissioner argues that the CAB erred when it concluded that the Insurer notified the Commissioner of its possible claim against the Fund no later than 100 weeks after the injury. The Insurer counters that the memoranda of payment provided notice to the Commissioner of its possible claim against the Fund. We agree with the Commissioner.

[¶9] Our review of the CAB's decision is established by statute. Appeal of Lawson Group, 175 N.H. 397, 399 (2022); see RSA 281-A:43, I(c) ("Any party in interest aggrieved by any order or decision of the [CAB] may appeal to the supreme court pursuant to RSA 541."). We will not set aside the CAB's order "except for errors of law," unless we are satisfied "by a clear preponderance of the evidence" before us, "that such order is unjust or unreasonable." RSA

541:13 (2021). The CAB's factual findings "shall be deemed to be prima facie lawful and reasonable." Id.

[¶10] RSA 281-A:15, III provides:

> Where the employee is employed as of the date of injury concurrently by 2 or more employers subject to this chapter and is disabled from any such employment, "average weekly wages" shall be computed on the basis of the weekly wages received by the employee from all such employers at the time of the injury. . . . The employer in whose employment the employee was injured shall be liable in the first instance for payment of all benefits. Any additional compensation resulting from the increase in average weekly wages due to the employee's concurrent employment shall be reimbursed by the special fund created under RSA 281-A:55.

RSA 281-A:15, III; see also RSA 281-A:55-a, I. RSA 281-A:55-a, II requires that "[a]n employer or carrier shall notify the labor commissioner of any possible claim against the special fund as soon as practicable, but in no event later than 100 weeks after the injury or death." RSA 281-A:55-a, II.

[¶11] Again, in this case the Insurer did not file its claim against the Fund until August 29, 2022, which was more than 100 weeks after January 7, 2020, when the employee suffered the injury. Nonetheless, the Insurer argues that the memoranda of payment notified the Commissioner of its possible claim against the Fund, specifically because two of the memoranda contained handwritten notes saying that the employee's average weekly wages were based upon her combined wages from BAE and another employer. We are not persuaded that the memoranda satisfied the statutory notice requirement. The statute places the onus on the employer or carrier to notify the Commissioner that it may have a claim against the Fund. See id. It does not obligate the Commissioner to attempt to intuit from filings made for other purposes that the employer or carrier may seek reimbursement from the Fund. See id. The memoranda of payment notified the Commissioner only that the employee had been paid workers' compensation benefits in accordance with RSA chapter 281-A. See RSA 281-A:40. The memoranda, and the handwritten notes on them, did not give notice that the Insurer intended to make a "possible claim" against the Fund. See RSA 281-A:55-a, II (providing that an "employer or carrier shall notify the labor commissioner of any possible claim against the special fund" (emphasis added)).

[¶12] We hold that the CAB erred when it concluded that the Insurer provided the Commissioner with notice of its possible claim against the Fund no later than 100 weeks after the injury as required by RSA 281-A:55-a, II. We have considered the Insurer's remaining arguments, and we conclude that they do not require further discussion. See Vogel v. Vogel, 137 N.H. 321, 322 (1994). Accordingly, we reverse the CAB's order and remand for further proceedings consistent with this opinion.

Reversed and remanded.

DONOVAN, COUNTWAY, and WILL, JJ., concurred; MACDONALD, C.J., sat for oral argument but did not participate in the final vote.