

PERRY TRANSPORT, INC.
v.
MAINE EMPLOYERS' MUTUAL
INSURANCE COMPANY
Docket NO. INS-05-106

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DECISION AND ORDER

This adjudicatory proceeding has been called on the petition filed by Perry Transport, Inc., pursuant to 24 A M.R.S.A. §§ 229 and 2908(6), contesting the cancellation of its workers' compensation insurance policy by the Maine Employers' Mutual Insurance Company ("MEMIC"), pursuant to 24-A M.R.S.A. § 2385-F, for nonpayment of an outstanding premium debt. For the reasons set forth below, the petition is denied and the policy cancellation may proceed.

By agreement of the parties, an evidentiary hearing has been waived and this matter is being decided on briefs pursuant to 5 M.R.S.A. § 9053.¹ MEMIC submitted its brief by e-mail on August 5 and Perry Transport submitted its brief by e-mail on August 7.

The material facts are undisputed. The amount billed by MEMIC was the subject of a prior adjudicatory proceeding between the same parties, *Perry Transport, Inc. v. MEMIC*, No. INS-03-412, in which I ruled in favor of MEMIC on August 25, 2003 and on reconsideration, reaffirmed that ruling on September 25, 2003. The Superior Court affirmed on June 1, 2005. *Perry Transport, Inc. v. Maine Bureau of Insurance*, No. AP-03-14 (Androscoggin County, Delahanty, J.). The amount has remained unpaid, and MEMIC issued a notice of cancellation with an effective date of August 6, 2005. Perry Transport has been granted a stay of the policy cancellation pending the issuance of this Decision and Order, pursuant to 24 A M.R.S.A. § 2908(6).

Pursuant to 24-A M.R.S.A. § 2385-F, failure to pay an undisputed premium debt on a prior workers' compensation policy is grounds for cancellation of the current policy, and a premium debt is only deemed to be disputed until there has been a "resolution of the dispute by the bureau." The Bureau resolved that dispute in MEMIC's favor in September of 2003, so the only question is whether a dispute has not been fully resolved by the Bureau, within the meaning of the statute, until any subsequent appeals have also been fully resolved.

Both the plain language of the statute and general principles of Maine administrative law compel the conclusion that a company may² proceed with the cancellation process as soon as the dispute has been resolved at the administrative level, without waiting for all appeals to be exhausted. Perry Transport argues that "As with decisions of other State agencies, the Bureau's decision in this matter is not binding or final until the Law Court upholds the decision." This is not an accurate statement of Maine law. The Maine Administrative Procedure Act makes clear that "The filing of a petition for review shall not operate as a stay of the final agency action pending judicial review." 5 M.R.S.A. § 11004. When the Superintendent issues a Decision and Order, the

parties are routinely warned as part of their notice of appeal rights that "There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S.A. § 11004." Both the August 2003 Decision and Order and the September 2003 Decision and Order on Reconsideration in *Perry Transport I* contained that warning.

Even if I were to treat the petition before me as a timely application for stay of the September 2003 order, Perry Transport does not meet the statutory requirements. Pursuant to 5 M.R.S.A. § 11004, an applicant for stay must demonstrate both "a showing of irreparable injury to the petitioner" and "a strong likelihood of success on the merits."

I will not address the likelihood of success on the merits beyond noting that MEMIC has already prevailed in the Superior Court appeal, because Perry Transport has made no credible showing of irreparable injury. Perry Transport's argument that paying the premium bill while the appeal is pending would require it to waive its appeal is unsupported by any legal authority. Should Perry Transport pay the bill now and subsequently prevail on appeal, MEMIC will either credit the amount to Perry Transport's then-current bill, refund it promptly, or face disciplinary action.

Perry Transport, however, proposes that disciplinary action be imposed against MEMIC now, before MEMIC has violated any law in this case or given the slightest indication that it might violate any law in this case. That is as frivolous as Perry Transport's argument that it would forfeit its right to appeal if it paid what it owed. All MEMIC has done is to attempt to collect a debt that it believes in good faith that it is owed, something it could lawfully have done almost two years ago. This would not have been sanctionable misconduct even if I had ruled in Perry Transport's favor on the merits of the cancellation.

Order and Notice of Appeal Rights

It is therefore *ORDERED* that the Petition is hereby *DENIED*. Perry Transport's workers' compensation policy shall terminate at 12:01 a.m. on August 22, 2005, unless before that time Perry Transport has paid the amount owed in full, including interest, or unless otherwise provided by agreement of the parties or further order of the Superintendent or a court of competent jurisdiction.

This Decision and Order is a final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act. It is appealable to the Superior Court in the manner provided in 24-A M.R.S.A. § 236 (2000) and M.R. Civ. P. 80C. Any party to the hearing may initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal on or before September 19, 2005. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S.A. § 11004.

¹ Pursuant to 24 A M.R.S.A. § 210, the Superintendent has appointed Bureau of Insurance Attorney Robert Alan Wake to conduct this proceeding, with full decisionmaking authority.

² The language of 24 A M.R.S.A. § 2385-F is mandatory. However, when the debt is owed to the same company that is currently providing coverage, that company may waive its right to immediate cancellation and defer collection of the debt, as MEMIC did while Perry Transport's Superior Court appeal was pending.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

AUGUST 8, 2005

**ROBERT ALAN WAKE
DESIGNATED HEARING OFFICER**