

N.D.A.G. Letter to Tracy (Oct. 25, 1991)

October 25, 1991

Ms. Helen Tracy
Executive Director
Workers Compensation Bureau
Russel Building
4007 North State Street
Bismarck, ND 58501-0600

Dear Ms. Tracy:

Thank you for your September 23, 1991, letter in which you request clarification of North Dakota Century Code (N.D.C.C.) §§ 65-02-08 and 65-02-17.

The Bureau is required to "establish, by administrative rule, an hourly rate to compensate claimants' attorneys for legal services following constructive denial of a claim or issuance of an administrative order under chapter 28-32 reducing or denying benefits." N.D.D.C. § 65-02-08. N.D.D.C. § 65-02-17, however, limits the number of situations in which the Bureau may pay a claimant's attorney's fees.

Binding arbitration panel -- Attorneys fees. Following constructive denial of a claim or issuance of an administrative order under chapter 28-32 reducing or denying benefits, an aggrieved employee may request that the action be submitted to binding arbitration before the workers' compensation binding arbitration panel in lieu of a formal administrative hearing or judicial remedy. The bureau shall pay, at an hourly rate established by the bureau, a claimant's attorneys' fees on claims submitted for binding arbitration. If the aggrieved employee elects not to submit the action to binding arbitration, attorneys' fees may only be paid if the employee prevails.

N.D.D.C. § 65-02-17.

N.D.D.C. § 1-02-07 applies to this situation in which there is an apparent conflict between statutes.

Whenever a general provision in a statute is in conflict with a special provision in the same or in another statute, the two must be construed if possible, so that effect may be given to both provisions, but if the conflict between the two provisions is irreconcilable the special provision must prevail and must be construed as an exception to the general provision, unless the general provision is enacted later and it is the manifest legislative intent that such general provision shall prevail.

N.D.D.C. § 1-02-07.

N.D.D.C. § 65-02-08 is a general statute governing, among other things, the establishment and application of an attorney fee schedule. Pursuant to N.D.D.C. § 65-02-08, the Bureau must establish, by rule, an appropriate fee schedule to compensate claimants' attorneys. However, the application of this fee schedule is limited to those situations described in a special statute, N.D.D.C. § 65-02-17. N.D.D.C. § 65-02-17 limits the payment of attorney fees to when an employee elects to resolve the claim through binding arbitration, or when the employee requests a hearing and subsequently prevails. The special statute governs those situations to which it applies. Therefore, the Bureau may only pay attorney fees when an employee elects to resolve the claim through binding arbitration or when the employee requests a hearing and ultimately prevails.

I trust this discussion has been helpful to you.

Sincerely,

Nicholas J. Spaeth

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