

Baer, Steven

SANCTIONS

Civil Rule 11

The Board will consider a motion for sanctions based on CR 11 at the time it considers a petition for review. Motions filed for sanctions under RCW 4.84.185 must be filed after a final order. ...***In re Steven Baer, BIA Dec., 98 10319 (1999)*** [Editor's Note: The Board's decision was appealed to superior court under Yakima County Cause No. 99-2-01464-3.]

Scroll down for order.

1 **DECISION**

2
3 We granted review solely to rule on the provider's Motion for Sanctions. We agree with our
4 industrial appeals judge's disposition of this appeal and reaffirm his decision. We accordingly deny
5 the merits of Superior Asphalt's Petition for Review.
6
7

8
9 FCC filed a Petition for Review that consisted entirely of a Motion for Sanctions against the
10 James L. Groves Company. It maintains its attorney fees in defending the appeal should be
11 awarded based on CR 11, which authorizes sanctions against an appealing party if its appeal is
12 frivolous. We deny the motion and decline to authorize sanctions against the self-insured employer
13 or the James L. Groves Company.
14
15
16
17

18
19 Under the provisions of CR 11, sanctions can be awarded to a responding party for its
20 attorney fees and costs in defending a frivolous appeal. An appeal is frivolous if it cannot be
21 supported by any rational argument on the law or facts. *Layne v. Hyde*, 54 Wn. App. 125, at 135
22 (1989). In other words, if an appeal presents no debatable issues upon which reasonable minds
23 might differ, and it is so devoid of merit that there is no possibility of success, it should be deemed
24 frivolous. *Layne v. Hyde*, 54 Wn. App. 125 (1989); *Boyles v. Department of Retirement Systems*,
25 105 Wn.2d 499, at 506-507 (1986). We do not believe Superior Asphalt's appeal was frivolous.
26
27 Reasonable minds could certainly differ regarding whether FCC's chart notes complied with the
28 requirements of WAC 296-20-01002. We, therefore, deny FCC's Motion for Sanctions.
29
30
31
32

33 We also wish to clarify a prior holding regarding the procedure we will follow in ruling on
34 motions for sanctions. In *Maria Gonzalez*, Dckt. Nos. 97 0261 et al, we declined to rule on a party's
35 motion for sanctions in our Decision and Order, holding that parties must file such motions after the
36 decision and order has become final. Parties moving for sanctions can file under CR 11, which
37 authorizes sanctions against any party for filing a frivolous pleading, or under RCW 4.84.185, which
38 authorizes sanctions for opposing a frivolous action, claim or defense. The latter statute requires
39
40
41
42
43
44
45
46
47

1 motions to be filed after a final order or judgment has been issued. *In re Don Eerkes*, BIIA
2 Dec., 90 2532, at 5 (1992). However, we will rule on a Petition for Review that contains a motion
3 for sanctions filed under CR 11 in our Decision and Order. *In re Donald Anderson*, BIIA
4 Dec., 97 3724 (1989). Accordingly, our holding in *Maria Gonzalez* is limited to motions for
5 sanctions filed pursuant to RCW 4.84.185.
6
7
8
9

10
11 Therefore, based upon a careful review of the record in this appeal, we have determined the
12 Proposed Decision and Order was correct and is affirmed. We hereby deny FCC's Motion for
13 Sanctions. With minor non-substantive corrections, we adopt the findings, conclusions and order in
14 the Proposed Decision and Order as the final decision of this Board.
15
16
17
18

19 **FINDINGS OF FACT**

- 20
21 1. On October 9, 1996, the claimant, Steven R. Baer, filed an application
22 for benefits with the Department of Labor and Industries alleging that he
23 sustained an industrial injury on October 3, 1996, while in the course of
24 employment for Superior Asphalt & Paving Co., a self-insured employer.
25 Subsequently, the Department issued an order allowing the claim. On
26 September 8, 1997, the Department issued an order that directed the
27 self-insured employer to pay all bills for treatment by James R. Milliron,
28 D.C., for the accepted condition under this claim between the dates of
29 October 3, 1996 and February 3, 1997. On October 6, 1997, the self-
30 insured employer protested the order. On December 9, 1997, the
31 Department affirmed the October 6, 1997 order. On January 20, 1998,
32 the self-insured employer appealed the December 9, 1997 order to the
33 Board of Industrial Insurance Appeals. On February 12, 1998, the
34 Board issued an order granting the appeal and assigned it Docket
35 No. 98 10319.
36
- 37 2. James R. Milliron, D.C., submitted chart notes to James L. Groves Co.,
38 to support billings for treatment provided between October 3, 1996 and
39 February 3, 1997. The chart notes contain legible handwriting and a
40 comprehensible description of subjective complaints, objective findings,
41 assessment and treatment, and plan of care.
42

43 **CONCLUSIONS OF LAW**

- 44
45 1. The Board of Industrial Insurance Appeals has jurisdiction over the
46 parties and the subject matter in this appeal.
47

