SPP Guiding Case No. 205: Litigation Supervision Case: Li Mou v. the Human Resources and Social Security Bureau and the Municipal People's Government of a City in Hubei Province (Work-Related Injury Insurance Qualification Determination and Administrative Reconsideration)

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

Decided at the 22nd meeting of the 14th Procuratorial Committee of the Supreme People's Procuratorate on January 19, 2024; issued on April 2, 2024.

Keywords

Supervision of effective administrative judgments / work-related injury determination / burden of proof / administrative protest / follow-up supervision

Holding

Where a social insurance administrative department declines to determine a work-related injury on the ground that a traffic accident injury suffered by a worker on the way to or from work "cannot be determined as being not primarily the worker's responsibility," the determination shall be based on clear facts and sufficient basis. Where the traffic management department is unable to determine liability for the accident, the burden of proving that the accident was not primarily the worker's responsibility shall not be borne by the worker. Where an effective administrative judgment erroneously allocates the burden of proof, the people's procuratorate shall supervise it in accordance with law. Where a judgment or ruling rendered by a people's court upon the trial of an administrative protest case still contains an obvious error and satisfies the conditions for protest, the people's procuratorate may carry out follow-up supervision ex officio.

Basic Facts

Li Mou was a designer employed by a cabinet business department (hereinafter referred to as the "Business Department") in a certain district of a city in Hubei Province. Around the time of leaving work on July 5, 2014, a leader of the unit assigned Li Mou to drive a unit vehicle to deliver cabinet materials to a client's home. After delivering the materials, Li Mou drove home; at around 20:00, near the Gumishan gas station on Gaoxin Avenue, he hit a central flower bed of the road and was injured. On October 20, 2014, Li Mou applied to the Municipal Human Resources and Social Security Bureau (hereinafter referred to as the "Municipal HRSS Bureau") for a work-related injury determination. The Municipal HRSS Bureau suspended the work-related injury determination on the ground that Li Mou needed to submit a certificate of accident liability determination issued by the relevant department. The traffic police brigade handling the accident stated that the accident involving Li Mou was a single-vehicle accident and that it was unable to provide a certificate of accident liability determination, and could only provide a Traffic Accident Certificate. Li Mou withdrew his work-related injury determination application. In March 2015, Li Mou filed a civil lawsuit against the Business Department on the ground that it should bear liability for compensation. The Intermediate People's Court of the city held in its final judgment that an employment relationship existed between Li Mou and the Business Department, and that the matter should be remedied through the work-related injury determination procedure. In 2017, Li Mou again applied to the Municipal HRSS Bureau for a work-related injury determination. On June 20, 2017, the Municipal HRSS Bureau issued a Decision Not to Determine a Work-Related Injury, on the ground that Li Mou's injury could not be determined as having been caused by a traffic accident for which he was not primarily responsible while on the way home from work. Li Mou applied for administrative reconsideration, and the Municipal Government issued an Administrative Reconsideration

Source: https://www.danyoungcpa.com/spp-guiding-case-205-china/

Decision holding that the substantive content of the Municipal HRSS Bureau's decision was correct. In January 2018, Li Mou filed an administrative lawsuit, requesting the court to revoke the Decision Not to Determine a Work-Related Injury and the Administrative Reconsideration Decision and to find that the injury he sustained was a work-related injury.

On March 28, 2018, the Primary People's Court of a district of the city rendered a first-instance judgment. That court held that Li Mou had a traffic accident on his way home after completing the delivery work assigned by his leader, but that it had not been proved that the accident was caused by reasons for which Li Mou was not primarily responsible, and therefore the Municipal HRSS Bureau's decision not to determine a work-related injury was not improper. The court dismissed Li Mou's claim for a work-related injury determination.

Li Mou appealed. On June 15, 2018, the Intermediate People's Court of the city rendered a second-instance judgment dismissing the appeal on the same grounds. Li Mou applied to the Higher People's Court of Hubei Province for retrial, and on September 11, 2018, the Higher People's Court of Hubei Province issued an administrative ruling rejecting the retrial application.

Procuratorate Performance of Duties

Source of the case. Li Mou applied to the procuratorial organ for supervision. The People's Procuratorate of a city in Hubei Province accepted and examined the case in accordance with law, and then requested the People's Procuratorate of Hubei Province to lodge a protest.

Supervision opinions. Upon examination, the People's Procuratorate of Hubei Province held that Li Mou's injury satisfied the circumstances prescribed in item (5) of Article 14 of the Regulations on Work-Related Injury Insurance, namely that he was injured for work-related reasons while away on business, and should be determined as a work-related injury. According to paragraph 2 of Article 5 of the Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Administrative Cases Involving Work-Related Injury Insurance, there was no evidence that Li Mou had gone out to engage in illegal acts or for personal purposes, and the injury he suffered in an accident while going out to deliver materials to a client as assigned by the person in charge of the Business Department should be determined as a work-related injury. In this case, the burden of proving that the injury was "not primarily his own responsibility" should not be borne by Li Mou. On December 26, 2019, the People's Procuratorate of Hubei Province lodged a protest with the Higher People's Court of Hubei Province.

Judgment result. On August 28, 2020, the Higher People's Court of Hubei Province rendered an administrative judgment. Upon retrial, that court held that Li Mou, as a party to the traffic accident, had the right to request the traffic management department to determine the nature and liability of the accident, and therefore, after the court determined the fact that Li Mou was "injured on the way home from work," Li Mou should bear the burden of proving that the traffic accident involved was not caused by reasons for which he was primarily responsible. Since Li Mou had not produced such proof, he should bear the corresponding legal consequences. The court upheld the original judgment.

Follow-up supervision. The People's Procuratorate of Hubei Province held that the administrative judgment of the Higher People's Court of Hubei Province was erroneous in the application of law, and decided to carry out follow-up supervision pursuant to Article 36 of the Rules for Supervision over Administrative Litigation by the People's Procuratorates (for Trial Implementation), paragraph 2 of Article 93 and item (4) of Article 91 of the Administrative Litigation Law of the People's Republic of China. On December 9, 2020, the People's Procuratorate of Hubei Province requested the Supreme People's Procuratorate to lodge a protest.

On the basis of a comprehensive review of the case file, the Supreme People's Procuratorate entrusted the People's Procuratorate of Hubei Province to carry out supplementary investigation, visited the traffic police brigade, and communicated with the police officers handling the accident, and also inquired of Xie Mou, the employer of the Business Department. The case-handling personnel of the Supreme People's Procuratorate

heard Li Mou's opinions in person and inspected the road conditions and environment on site. On June 8, 2021, the Supreme People's Procuratorate lodged a protest with the Supreme People's Court. The protest held that the retrial court's determination that Li Mou was injured on the way home from work and that the burden of proving that the traffic accident involved was not primarily his responsibility should be borne by Li Mou was inconsistent with the law. First, Li Mou had already discharged the burden of proof that he should bear. The Municipal HRSS Bureau, in declining to determine Li Mou's injury as a work-related injury, should have provided the basis for finding that Li Mou met the conditions for not determining a work-related injury. The retrial court's determination that the burden of proving that the traffic accident involved was not primarily Li Mou's responsibility should be borne by Li Mou was inconsistent with the legal principle prescribed by the Administrative Litigation Law of the People's Republic of China that an administrative organ bears the burden of proof with respect to the administrative act it performs. Second, pursuant to Articles 5, 17 and 19 of the Regulations on Work-Related Injury Insurance, the social insurance administrative department has the administrative function and duty to determine work-related injuries and to investigate and verify the relevant facts. In this case, the Municipal HRSS Bureau failed to fulfill its duty to investigate and verify the relevant facts, and on the basis of the accident certificate of the public security traffic management department, determined that Li Mou's injury was caused by a single-vehicle accident and thus made a decision not to determine a work-related injury on the ground that it could not be determined that the injury was not primarily Li Mou's responsibility; such a determination lacked a factual basis. Third, Li Mou's traffic accident injury was highly connected with his going out for work. Li Mou's completion of the work task assigned by the leader of his unit caused changes in his working hours and route, which brought him more uncertain risks than ordinary working hours, and there was no evidence that Li Mou engaged in personal activities entirely unrelated to work on his way home; such risks had a considerable causal relationship with his going out for work, and making Li Mou bear the consequences of the risks was contrary to the principle of fairness and reasonableness.

Supervision result. On April 19, 2022, the Supreme People's Court adopted the protest opinions of the Supreme People's Procuratorate, holding that the Municipal HRSS Bureau's determination in the work-related injury decision that Li Mou did not fall within the situation of "not primarily his own responsibility" lacked factual and legal basis, and that the Municipal HRSS Bureau should bear the legal consequences of failing to prove; it revoked the first-instance, second-instance and retrial judgments, revoked the administrative reconsideration decision and the decision not to determine a work-related injury, and ordered the Municipal HRSS Bureau to make a new decision on Li Mou's work-related injury determination application. On July 4, 2022, the Municipal HRSS Bureau made a decision determining a work-related injury with respect to Li Mou's work-related injury determination application.

Guiding Significance

(1) When handling cases of supervision over effective administrative judgments involving work-related injury insurance qualification determination, the people's procuratorate shall, in accordance with law, put forward supervision opinions with respect to improper allocation of the burden of proof as to "not primarily one's own responsibility" and erroneous application of law in effective administrative judgments of the people's courts. A worker who suffers injury in a traffic accident on the way to or from work for which he is not primarily responsible shall be determined as having a work-related injury. The certificate of accident liability determination issued by the traffic management department is an important basis for the social insurance administrative department to perform its work-related injury determination duties; where the traffic management department is unable to determine liability for the accident and the employing unit has not provided effective evidence that the injury is not a work-related injury, the social insurance administrative department shall, pursuant to Articles 9 through 15 of the Measures for Work-Related Injury Determination, investigate and verify the facts relevant to the work-related injury determination and bear the burden of proof for its determination conclusion. Where an effective administrative judgment erroneously allocates the burden of proof, the people's procuratorate shall supervise it in accordance with law.

(2) Where a judgment, ruling or mediation statement rendered by a people's court upon the trial of an administrative protest (retrial procuratorial suggestion) case still contains an obvious error and satisfies the conditions for protest, the people's procuratorate may carry out follow-up supervision. Follow-up supervision is an important means of giving full play to the administrative litigation supervision function and handling every case with high quality and efficiency. Where, after the people's procuratorate lodges a protest in accordance with law (issues a retrial procuratorial suggestion), the judgment, ruling or mediation statement rendered by the people's court upon retrial still contains errors in fact-finding or application of law, the people's procuratorate may ex officio lodge another protest or request a higher-level people's procuratorate to lodge a protest, so as to prompt the people's court to correct the erroneous judgment upon retrial, uphold judicial fairness and judicial authority, and safeguard the uniform and correct implementation of State laws.

Relevant Legal Provisions

Articles 34, 91 and 93 of the Administrative Litigation Law of the People's Republic of China.

Articles 5, 14, 15, 16, 17, 18 and 19 of the Regulations on Work-Related Injury Insurance.

Articles 1 and 5 of the Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Administrative Cases Involving Work-Related Injury Insurance.

Article 125 of the Rules for Supervision over Administrative Litigation by the People's Procuratorates.

Article 50 of the Provisions on the Procedures for Handling Road Traffic Accidents (2008) (Article 67 of the 2017 Revision).

Articles 6, 9, 10, 11, 12, 13, 14 and 15 of the Measures for Work-Related Injury Determination.

Disclaimer: This translation is provided for reference and informational purposes only. In the event of any discrepancy, the official Chinese text issued by the Supreme People's Procuratorate shall prevail. This translation does not constitute legal advice.