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Allocation of the Burden of Proof for Non-Primary Responsibility from the Perspective of the Determination of Work-Related Injuries

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Abstract: Article 14, paragraph 6 of the Regulations on Work-Related Injury Insurance provides that an employee shall be ascertained to have suffered from work-related injury if he is injured in a traffic accident on his way to or from work for which he is not principally responsible. In practice, the traffic control department of the public security organ has the legal duty to handle traffic accidents and produce Traffic Accident Confirmation. If the traffic control department of the public security organ produces the Traffic Accident Confirmation by law, the social insurance administrative department, in the absence of other disputes, often can directly determine whether the injured employee has "primary responsibility" or not based on the division of responsibility in the Traffic Accident Confirmation, and then determine whether the injury suffered by the employee is a work-related injury or not. Nevertheless, real cases are rather complex. The traffic control department of the public security organ often faces difficulties in producing the Traffic Accident Confirmation due to an inability to ascertain the causes and facts of a traffic accident. In such cases, they can only conclude cases with an alternative document - Traffic Accident Certificate. However, such certificates do not present the specific causes of the traffic accident, the faults and responsibilities of the parties involved in the traffic accident, or whether the accident is accidental. Thus social insurance administrative departments cannot directly determine whether the injured employee has "primary responsibility", putting obstacles to the determination of work-related injuries. This paper aims to analyze judicial practice cases to explore the divergence on the burden of proof for "non-primary responsibility" in practice, and to investigate the reasonable allocation of the burden of proof for "non-primary responsibility", thus providing some reference for the judgment of similar cases.

1. Introduction

1.1 The empirical legal basis of the rules of burden of proof for the determination of work-related injuries in China

(1) Relevant provisions of the Administrative Procedure Law of the People's Republic of China

In China, the determination of work-related injuries requires the confirmation by specialized administrative agencies. The administrative agencies responsible for the determination of work-related injuries is the social insurance administrative department. Only after its administrative confirmation can employees obtain corresponding insurance benefits. The administrative confirmation by the social insurance administrative department is a confirmation of the legal relationship rather than the facts[1]. Plaintiffs have the right to sue. If they believe that the administrative agencies have infringed upon their legitimate rights and interests, they can present their claims to the People's Court[2]. Administrative counterparts can eliminate their administrative effectiveness by filing an administrative litigation. However, the complexity of the burden of proof in administrative litigation cases involving the determination of work-related injuries lies in the preceding administrative confirmation procedure[3].

Article 34 of the Administrative Procedure Law of the People's Republic of China provides corresponding regulations on the burden of proof for defendants. The fact that the defendant bears the burden of proof does not mean that burden of proof in administrative litigation is all borne by the defendant. In administrative litigation related to work-related injuries, the social insurance administrative department bears the burden of proof mainly for the legality of its administrative actions, which shall not be misconstrued that the defendant always has the burden of proof in administrative litigation. There are significant differences between the two.

(2) The relevant provisions of the Regulations on Work-Related Injury Insurance and the Measures for the Determination of Work-Related Injuries

The Regulations on Work-Related Injury Insurance and the Measures for the Determination of Work-Related Injuries have established specific provisions regarding the burden of proof for the determination of work-related injuries. For instance, Article 19, Paragraph 2 of the Regulations on Work-Related Injury Insurance points out that in the case where there is a disagreement between the employee and the employing entity regarding the facts of the determination of work-related injuries, the burden of proof shall be borne by the denying party, namely the employing entity [4]. This provision was established by legislators based on their consideration of the actual situation. Within the administrative confirmation procedure of work-related injuries, this provision provides a general guideline on the allocation of the burden of proof for work-related injuries, and also serves as a standard for measuring whether the allocation of the burden of proof applied by the social insurance administrative department in determining the work-related injuries is correct or not. At the same time, it also imposed a profound impact on the subsequent allocation of the burden of proof in administrative proceedings for the determination of work-related injuries.

1.2 Case analysis on the allocation of the burden of proof for non-primary responsibility

(1) Background

Mr. Gao, an employee of a certain lifting company, was employed as a crane operator. On February 21, 2015, while driving a car from a certain county to the lifting company, Mr. Gao was injured in a traffic accident and subsequently received medical treatment. After that, the local Human Resources and Social Security Bureau received and accepted the application for the determination of the work-related injury from the lifting company according to the law. On March 25, 2015, local Traffic Police Detachment of the Public Security Bureau issued a Traffic Accident Certificate, stating that the cause of the traffic accident could not be determined. On May 19, 2016, the local Human Resources and Social Security Bureau produced a Decision of Refusal to Determine a Work-related Injury, presenting that this traffic accident suffered by Mr. Gao was a unilateral traffic accident, which did not meet the requirements of “non-primary responsibility” and situation stipulated in Article 14 and Article 15 of the Regulations on Work-related Injury Insurance.

Based on above reasons, the injury suffered by Mr. Gao could not be recognized as a work-related injury or regarded as such[5]. In this regard, Mr. Gao filed a lawsuit against the local Human Resources and Social Security Bureau. The court of first instance held that the defendant's conduct to issue the Decision of Refusal to Determine a Work-related Injury complied with the legal provisions and then dismissed Mr. Gao's claim. Then Mr. Gao file an appeal against judgment of first instance. The court of second instance held that in the case where the traffic control department of the public security organ was unable to determine the cause of a traffic accident, the local Human Resources and Social Security Bureau, solely based on Mr. Gao's claim that the accident was caused by another vehicle changing lanes in the same direction without providing evidence to substantiate his assertion, concluded that the traffic accident was a unilateral accident for which Mr. Gao bore the primary responsibility or above. The fact determined in the judgment of first instance was unclear and the evidence was insufficient, thus the judgment shall be revoked by law. Based on that, the court of second instance decided to revoke the judgment of first instance and the Decision of Refusal to Determine a Work-related Injury, and ordered the local Human Resources and Social Security Bureau to make a new administrative decision within the statutory period.

(2) Case analysis

This case involves the determination of work-related injuries when the traffic control department of the public security organ is unable to determine the responsibility in a traffic accident. Traffic Accident Confirmation issued by traffic control department of the public security organ is critical in determining work-related injuries. In typical traffic accidents, the traffic control department of the public security organ can issue a Traffic Accident Confirmation based on the scene investigation and interviews with the parties involved. However, in certain exceptional cases where evidence and facts cannot be clarified, the responsibility for the traffic accident cannot be determined. According to Article 1, Paragraph 2 of the Provisions of the Supreme People's Court on Several Issues concerning the Trial of Administrative Cases on Work-Related Injury Insurance, in the case where the traffic control department of the public security organ cannot determine the responsibility for a traffic accident, social insurance administrative departments shall still determine the fact of the traffic accident by law. Furthermore, the provision explicitly states that the court shall legally review the fact judgment made by the Human Resources and Social Security Bureau based on the relevant provided evidence. From the allocation of the burden of proof in the Administrative Procedure Law of the People's Republic of China, the fact that the burden of proof shall be borne by the defendant in administrative litigation differs from the principle of “burden of proof borne by claimant” in the Civil Procedure Law of the People's Republic of China, but it is conducive to protect the legitimate rights and interests of employees. The judgment of second instance in this case is definitely correct as it conforms to the purpose of legislation to provide relief and compensation for injured employees and the legislative spirit of protecting the vulnerable.

2. Reflections: Divergence on the allocation of the burden of proof for non-primary responsibility

In practice, there are three different views on the subject of the burden of proof for non-primary responsibility.

2.1 The burden of proof is borne by the social insurance administrative departments

The court of final appeal in this case held that the social insurance administrative department who did not provide evidence to prove that the injured employee bore the primary responsibility made a decision not to determine the work-related injury on the grounds that the applicant (the injured employee) could not provide corresponding evidence, which essentially presumed that the

injured employee bore “primary responsibility” or “full responsibility”. However, such presumption has no valid logical reasoning process and factual or legal basis, thereby depriving the legitimate right of injured employee to obtain work-related injury insurance benefits.

2.2 The burden of proof is borne by the injured employee

In similar cases such as “a dispute over the administrative confirmation of a work-related injury between Mr. Chen and a certain Human Resources and Social Security Bureau”, the court held that the constituent element of a work-related injury on the way to and from work requires the injured employee to prove his “non-primary responsibility”. If the employee cannot provide evidence to prove it, he shall bear the adverse consequence for his failure to assume burden of proof. This is because that we cannot interpret the Article 19, paragraph 2 of the Regulations on Work-Related Injury Insurance only at its literal meaning. In practice, employing entities are also unable to provide evidence to prove that the employee bears primary or full responsibility in the determination of work-related injuries on the way to and from work. If it is simply determined that the employee meets the requirements of a work-related injury only based on his failure to provide evidence for non-primary responsibility, it would violate fairness and justice. Moreover, not all aspects of work-related injury insurance benefits are covered by the work-related injury insurance fund. Determining a work-related injury solely based on literal interpretation would lead to the employing entity bearing unfounded obligations, and to some extent, would encourage the practice that employees try to make the responsibility of traffic accidents cannot be identified by such unethical behaviors as delay in reporting accidents or false statements to ultimately achieve the purpose of determining a work-related injury. From the perspective of the entire framework of the work-related injury insurance law, there should also be an obligation for employees to bear the burden of proof. In the process of work-related injury determination, as the party holding the right, employees should bear the primary obligation to prove the existence of the work-related injury.

2.3 The burden of proof is first borne by the employing entity due to the unclear responsibility of the traffic accident

This viewpoint argues that when the responsibility for a traffic accident is unclear, social insurance administrative departments shall not directly make a determination based on relevant evidence. Instead, they shall require the employing entity to bear the burden of proof first and then make the determination based on investigation and verification results. Although social insurance administrative departments can suspend the determination of work-related injuries on the grounds that the fact of the traffic accident is unclear, such suspension makes whether it is a work-related injury in a state of uncertainty. Therefore, this viewpoint also suggests that when competent authorities has not reached a conclusion, social insurance administrative departments shall proactively communicate with competent authorities. If competent authorities still cannot reach a conclusion, the employing entity shall bear the burden of proof. If the employing entity cannot provide evidence, it shall be presumed as a work-related injury according to the law.

3. Exploration: Improvement of the rules for the allocation of the burden of proof for “non-primary responsibility”

3.1 Subject of the burden of proof for “non-primary responsibility”

According to relevant regulations, where an employee is injured in an accident, the employing entity shall, within 30 days as of the day when the accident injury occurs, file an application for the

determination of the work-related injury to the social insurance administrative department of the region, and the injured employee or his lineal relative, or the labor union organization may, within 1 year as of the date on which the accident injury occurs, file an application for the determination of the work-related injury. To apply for the determination of a work-related injury, the applicant shall fill out a Form of Application for the Determination of a Work-Related Injury that contains such basic information as the time, location and cause of the traffic accident. Therefore, during the application for the determination of a work-related injury (before acceptance), the injured employee, the employing entity, or labor union organizations may all potentially have the burden of proof. Article 17 of the Measures for the Determination of Work-related Injuries stipulates that where an employee holds that the case is a work-related injury, but the employing entity does not consider so, the employing entity shall bear the burden of proof. Therefore, the employee submit application materials, and the employing entity has the burden of proof after the social insurance administrative accepts the application. According to the Administrative Procedure Law of the People's Republic of China, administrative agencies shall have the burden of proof for their administrative actions. Clearly, in administrative litigation arising from the determination of work-related injuries, the defendant, namely the social insurance administrative department, bears the burden of proof. The case in this paper primarily involves the subject of the burden of proof for “non-primary responsibility”. The subject of burden of proof for “non-primary responsibility” may vary at different stages. During the application for the determination of a work-related injury, if the proof of non-primary responsibility is necessary, the applicant, injured employee Mr. Gao, shall have the burden of proof, while in the determination of a work-related injury, if the denial of non-primary responsibility is necessary, the employing entity, lifting company, shall bear the burden of proof. In administrative litigation arising from the determination of work-related injuries, the Human Resources and Social Security Bureau shall have the burden of proof for “non-primary responsibility”. Regardless of the social insurance administrative department to determine whether it is a work-related injury or not, in administrative litigation arising from such determination, the social insurance administrative department, as the administrative agency, has the obligation to proactively provide evidence to demonstrate the legality of its decision on the determination of the work-related injury. Therefore, as for whether it is “non-primary responsibility”, the social insurance administrative department shall bear the burden of proof.

3.2 Reasonable allocation of the burden of proof for “non-primary responsibility”

The social insurance administrative departments generally do not have the authority to initiate the determination of a work-related injury on its own but rather initiates determinations upon application. At the outset of the application for the determination of a work-related injury, the applicant is required to submit basic evidentiary materials that meets the conditions for accepting the determination of the work-related injury. If the conditions for accepting the determination of the work-related injury are met, the formal process commences. Article 20 of the Measures for the Determination of Work-related Injuries provides that after the social insurance administrative department accepts an application for the determination of a work-related injury, if the social insurance administrative department needs to take the conclusion of the judicial organ or relevant administrative department as the basis for making a decision of determination of a work-related injury, it has the authority to suspend the determination process until the conclusion is reached, and a written notice shall be sent to the applicant. Moreover, Article 17 of the Measures for the Determination of Work-related Injuries also stipulates that where an employee or his lineal relative holds that the case is a work-related injury, but the employing entity does not consider so, the employing entity shall bear the burden of proof. Therefore, it is evident that the social insurance

administrative department can request the injured employee to provide additional evidence to prove the work-related injury and can also request the employing entity to present evidence to reject applicant's claim. In above case, the injured employee Mr. Gao proactively provided evidence that met the relevant regulations, satisfying the conditions for accepting the determination of the work-related injury. The Human Resources and Social Security Bureau accepted the application by law, indicating that the injured employee had actively fulfilled their burden of proof during the application for the determination of a work-related injury. During the determination of a work-related injury, the Human Resources and Social Security Bureau suspended the determination process on the grounds of needing a conclusion from the relevant department regarding "non-primary responsibility". At this point, the burden of proof reverted back to the injured employee. However, the Human Resources and Social Security Bureau overlooked the procedure to request the employing entity to provide evidence to prove that it was not a work-related injury, which inadvertently increased the burden of proof for the injured employee. According to the basic principle of burden of proof, the injured employee only needs to provide evidence supporting his claims. The Traffic Accident Certificate is sufficient to prove that Mr. Gao's injury meets the constituent elements of a work-related injury with "non-primary responsibility". Therefore, even if the injured employee cannot provide a conclusive opinion about the division of responsibilities, it shall not exempt the employee entity from the corresponding burden of proof.

As mentioned before, the social insurance administrative department has a heavy burden of proof both in the administrative procedure for the determination of a work-related injury and in administrative litigation. This is because the social insurance administrative department, as a national administrative agency, enjoys the legal authority to investigate and verify matters relating to the determination of work-related injuries, and has a stronger capacity for discernment, so that it shall bear a heavier burden of proof. In conclusion, the burden of proof for the determination of work-related injuries shall be shared by the injured employee, the employing entity, and the social insurance administrative department. However, in special cases, such as traffic accidents where the responsibility for the traffic accident is not clear, the burden of proof for non-primary responsibility shall primarily fall on the social insurance administrative department, with the employing entity providing assistance, and the injured employee shall bear the burden of proof for basic facts. For example, if an employee who suffers a traffic accident on his way to or from work has timely called the police, the traffic control department of the public security organ is still unable to clarify the facts of the accident due to objective conditions, and ultimately cannot determine responsibility. At this time, as it is not the fault of the employee, he shall not have to held liable for failure to determine responsibility. In such cases, considering the protection of employee's interest, it is more appropriate for the social insurance administrative department and the employing entity to bear the legal consequences of failure to assume burden of proof. If, as a party to the traffic accident, the employee is found to have intentionally or significantly contributed to the inability to clarify the facts of the accident, resulting in the failure to assume burden of proof, then there is no preference for the employing entity to bear the burden of proof. Instead, the employee shall bear the burden of proof and its adverse consequences, and his injury shall not be recognized as a work-related injury[6].

4. Conclusion

The burden of proof, often referred to the "backbone of litigation," is crucial to the success or failure of a litigation. Therefore, in cases regarding the determination of work-related injuries on the way to or from work, the allocation of the burden of proof for "non-primary responsibility" is of paramount importance. Based on existing legal provisions and judicial practice cases, this paper

summarizes different views on the allocation of the burden of proof, from which to seek an allocation solution that meets the purpose and objectives of work-related injury insurance system and balances the interests of all parties involved. Specifically, it proposes that the injured employee shall bear the burden of proof for the basic facts, while the social administrative department shall mainly bear the burden of proof for "non-primary responsibility", with the employing entity providing assistance.

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