Ankenævnet for Forsikring

908/13

Den 23. januar 2013 blev i sag nr. 83.488:

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xxx xxxxxxx
xxxxxxxx
xxxxxx xxx xxx
xxxxxx xxxxxxx

mod

Alpha Insurance A/S
Sundkrogsgade 21
2100 København Ø

afsagt

k e n d e l s e :

_____

Forsikringstageren, der er født i 1966, har tegnet "Short Term Income Protection Insurance" med dækning ved ufrivillig arbejdsløshed og midlertidig uarbejdsdygtighed i Alpha Insurance A/S. Hun klager over selskabets afvisning af at yde forsikringsdækning i anledning af uarbejdsdygtighed forårsaget af stress/angst.

Selskabet har afvist at yde forsikringsdækning med henvisning til, at klagerens uarbejdsdygtighed skyldes en lidelse, der var til stede ved forsikringens ikrafttræden den 30/7 2008.

I klagen, som nævnet har modtaget den 29/10 2012, har klageren bl.a. anført:

> "I have been signed off work since November 2011 and have not received any payment from my insurance company even though I have never made a claim since I took out the insurance in June 2008.
>
> I have been signed off with stress and anxiety.
>
> Initially I spoke to Trent Services (who I deal with in London) an they told me that I they would not consider my claim as they don't honour claims for stress & anxiety; you have to be seen by a specialist/consultant, this was a long process but I eventually saw a consultant/specialist on Friday 14th September and he wrote a letter/report to my doctor the following week. He confirmed that I was suffering from stress and anxiety this was affecting

my ability to work and that this was not a pre-existing condition, it had come about in the last few years.
The insurance company claim that this is a pre-existing condition, as I have said in my form, yes I had stress related problems but they were due to different kinds of stress, not the kind of stress and anxiety I have been suffering with for the past 2 years; this has been due to a bullying boss. Also a stress related injury is not a continuing event.

I have been in my company for 17 years so this all very upsetting for me and it doesn't help that Alpha are insinuating that I contradicted information to the specialist I saw a couple of weeks ago and also seem to imply that I am not being truthful. I am an honest hard working person and have been working 35 years without a break. I have never claimed any benefits in my life so for me to be in this position and then have to fight for nearly a year with the insurance company to honour my claim is even more distressing.

I have been paying £44 towards this policy since June 2008 I took it out in good faith, hoping that I would never have to claim on it but life sometimes puts you in unexpected situations."

Heroverfor har selskabet i brev af 1/11 2012 til nævnet anført:

"*[Klageren]* is complaining about Alpha Insurance A/S' decision not to pay her claim for benefit under her insurance policy, as the condition from which she is suffering was present prior to the inception of her policy and is therefore excluded as it is considered to be a pre-existing condition.

[Klageren] purchased a Short Term Income Insurance Policy in 2008 with Templeton Insurance Company, which had an inception date of 30 July 2008. We enclose as Attachments … and … copies of the Certificate of Insurance and the Policy Terms and Conditions. As of 1st March 2009, Alpha Insurance A/S became [klagerens] insurers and this was advised to her by letter dated 3"l April 2009, where it was confirmed that no other terms or conditions of her policy had been changed. (Attachment … hereto).

In the Completed Claim Form, Attachment …, submitted to Alpha's administrators, Trent-Services, in late 2011 it can be seen that [klagerens] doctor has stated the nature of her disability to be, 'Workstress related disorder with sleep disorder etc' and in the section where he has been asked to give details and dates of occasions when the patient has previously suffered from this or any associated complaint, a number of previous dates are listed, dating all the way back to the year 2000.

Medication has repeatedly been prescribed to [klageren] in this connection and that is also noted on the form.

More details are provided in the full medical notes that were obtained, with the consent of [klageren], from her doctor. (See consent form and full medical notes enclosed as Attachments … and …). For your ease of reference we have numbered the pages in the medical notes supplied and highlighted the various references to work-related stress and prescriptions relating to Propranol Hydrochloride mentioned therein. These can be found on pages 2, 3, 4, 5, 6, 15, 16, 26, 27, 28, 30, 31, 32, 34, 35, 36. It is of course the information contained in pages 5 and 6, which are from the 12 month period immediately prior to the inception of her insurance policy, that is of particular interest.

Some of the notes relate to earlier dates and some are from after the inception of [klagerens] insurance policy, but our point in highlighting **ALL** references to work-related stress and the

medication she has been prescribed in relation thereto is that, although [klageren] believes she can distinguish between the work-related stress she has suffered from since 2000 and the work-related stress that she believes affected her ability to work in 2011, we do not believe that any distinction can be made as far as her insurance policy coverage is concerned.

Our position is clearly set out in the various correspondence copied hereto, both between our administrators, Trent Services, and [klageren] from 2011 and 2012 and in our own recent e-mail correspondence with her.

[Klagerens] previous exemplary work record and the fact that she has not made any prior claim under her insurance policy are applaudable but, nevertheless, of no relevance in the evaluation of the validity of her current claim. We are most sympathetic to [klagerens] position, but the fact remains that her medical records confirm that she has received treatment, medication and advice (including regular or routine examinations or consultations to monitor the Condition) from her Doctor in connection with work-related stress in the 12 month period immediately prior to the start date of her insurance policy and no monthly benefit in connection with her work-stress related illness is therefore payable.

We can see that [klagerens] insurance advisor, …, also has the greatest sympathy with her. He did in fact write to our administrators in July of this year to enquire whether she might be entitled to make a claim under the unemployment section of her policy instead and you can see the reply supplied in Attachment ...

We trust that you find the comments above and documents enclosed helpful in the evaluation of this complaint and we will look forward to receiving the decision of Ankenævnet for Forsikring in due course."

Nævnet har fået forelagt de bilag, der er vedlagt sagen, herunder diverse lægelige oplysninger. Nogle af disse oplysninger gengives her:

Af journaludskrift fra klagerens læge fremgår bl.a.:

"**17/03/2004**
History
…
[D]Work stress (GMS)
…
06/10/2004
Problem (review) …
Stress at work
…
13/12/2004
Problem (new) …
Stress at work
…
10/10/2005
…
History
Stress at work

…
08/11/2006
…
Problem (review)
Stress at work
…
30/05/2007
Problem (first)
(D) Work stress
…
Medication
Propranol Hydrochloride M/R capsules 80 mg 56 capsule take one daily
…
21/08/2007
…
Medication
Propranol Hydrochloride M/R capsules 80 mg 56 capsule take one daily
…
26/10/2007
Problem (new) (D) Work stress
…
Medication
Propranol Hydrochloride M/R capsules 80 mg 112 capsule take once or twice daily

28/10/2008
…
Medication
Propranol Hydrochloride M/R capsules 80 mg 112 capsule take once or twice daily
….
08/09/2008
…
Problem (first)
Stress related problem
…
Medication
Propranol Hydrochloride M/R capsules 80 mg 112 capsule take once or twice daily
…
06/10/2008
Comment discussed work
…
19/11/2008
…
Comment
Work stressors
…
08/04/2009
…
Medication
Propranol Hydrochloride M/R capsules 80 mg 112 capsule take once or twice daily
…
29/09/2009
…

Medication
Propranol Hydrochloride M/R capsules 80 mg 112 capsule take once or twice daily
…
14/01/2010
Problem (review)
Stress at work
…
Medication
Propranol Hydrochloride M/R capsules 80 mg 112 capsule take once or twice daily
…
12/04/2011
…
Comment
…
Working long hours
…
08/06/2011
…
Medication
Propranol Hydrochloride M/R capsules 80 mg 112 capsule take once or twice daily
…
26/09/2011
Problem (review)
Stress at work
…
17/10/2011
Problem (new)
(D) Work stress
…
25/10/2011
…
Comment
Discussed on-going work issues
…
28/10/2011
Comment
…
Doctor's statement work stress-related illness
…
14/11/2011
Problem (review)
Stress at work"

I erklæring/udtalelse af 18/9 2012 fra liaisonsygeplejerske hedder det bl.a.:

"[Klageren] reports an unremarkable childhood, living in London with her 2 brothers, brought up by supportive parents. She still enjoys a close relationship with her mother, her father having died over 10 years ago.

[Klageren] was married briefly as a young adult. She has since enjoyed a number of good friendships.

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After she left school, [klageren] forsook a chance to attend university, to follow her ambitions in media and advertising. She has enjoyed a successful career in sales and account management, working for the same advertising company.

Mental Health; Prior to her difficulties over the past 3 years there is no previous history of mental health difficulties. Neither is there any history of mental health difficulties within her family.

[Klagerens] difficuities with anxiety and panic that have gradually emerged since 2009, at gear to be a consequence of experiencing bullying by a senior manager at her work place. I understand that she has also suffered from endometriosis and IRB since that time and we have to acknowledge that these may be linked to her anxiety.

She has found your presenning of Propranolol helpful for responding to and reducing her episodes of panic.

Current Presentation; [klageren] informed me that the number and intensity of her periods of panic have declined over the past few months although there is still some agoraphobia and a tendency to isolate herself in her flat. She still suffers from insomnia and a lack of motivation.

Risk; [Klageren] admitted to fleeting periods of hopelessness, but no firm plans to act upon these, I was more concerned about her PRN use of Propranolol which appears to exceed prescribing guidelines for anxiety and panic. After warning her of the dangers of over use, I suggested that she asks you to remind her of the maximum dose that you recommended.

Plan; [klageren] and I spent some time discussing how her condition is holding her back from dealing with her existing situation and very reduced circumstances. She has sought the help of Citizen's Advice Bureau and friends to help her deal with grievance claims against her employers as well as claims upon her mortgage protection Insurance. We have agreed that [klageren] may benefit from a program of CBT to help her deal with her anxiety and to help her feel less fearful about moving forward with her life and finding work again.

I discussed the available treatment options with [klageren] and we agreed that she will attend a 90 minute psycho-education session."

Af forsikringsbetingelserne fremgår bl.a.:

"1. **ELIGIBILITY CRITERIA OF THIS POLICY**

…

You cannot be covered under this **Policy** if on the **Start Date:**

Prior to the commencement of this **Policy You** are aware of any impending **Unemployment** or **Disability** which may affect **You** or **You** are aware of any circumstances which may result in **You** becoming a full time Carer.

…

3. **WHAT THE WORDS MEAN**

...

Pre-Existing Condition

Means any medical **Condition** for which **You** received treatment, medication or advice (including regular or routine examinations or consultations to monitor the **Condition**) from a Doctor or Consultant in the 12 month period immediately **prior to the certificate Start Date**.

…

9. **DISABILITY EXCLUSIONS**

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No **Monthly Benefit** will be payable to **You** if:
…

- **Your Disability** arises from stress, anxiety, depression or any mental or nervous disorder unless a **Consultant** certifies that the **Condition** solely prevents **You** from **Working;** or
- **Your Disability** results from any **Condition** which came about as a result of a **Pre-Existing Condition.**"

Nævnet udtaler:

Efter sin gennemgang af sagen, herunder de fremlagte lægelige oplysninger, finder nævnet at måtte lægge til grund, at klageren løbende - både før og efter forsikringens tegning - har konsulteret sin læge på grund af arbejdsrelateret stress, og at hun i forbindelse hermed har fået ordineret angstdæmpende medicin. Det fremgår desuden af journaloplysningerne fra klagerens læge, at der har fundet konsultationer sted under 12 måneder før forsikringens ikrafttræden, og at der også i denne periode er ordineret angstdæmpende medicin.

På baggrund af ovenstående - og efter det i øvrigt oplyste - finder nævnet herefter ikke grundlag for at kritisere, at selskabet har afvist at yde forsikringsdækning med henvisning til, at klagerens uarbejdsdygtighed skyldes en forudbestående lidelse. Det, som klageren i øvrigt har anført, findes ikke at kunne føre til et andet resultat.

Som følge heraf

b e s t e m m e s :

Klageren får ikke medhold.

Poul Sørensen

udskriften bekræftes

Henning Jønsson

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