

ORDER

Injury No.: 02-016564

Employee: Scott Curran
Employer: Johnson Controls, Inc.
Insurer: Authorized Self-Insurer

Introduction

On March 29, 2012, the Labor and Industrial Relations Commission (Commission) issued an award in this workers' compensation case allowing compensation to employee. Among other things, the award provides as follows with respect to employer/insurer's obligation to provide future medical treatment:

The claimant has been receiving medical treatment from Dr. Middleton for more than six years. The treatment appears to have brought the claimant some relief from this pain. He has a strong doctor patient relationship with Dr. Middleton. He has never been required to see her for over four times a year. I believe this treatment to be reasonable and necessary to cure and relieve the claimant from the condition of his repetitive injury.

I order and direct the employer to provide non-surgical medical treatment by Dr. Middleton for up to four visits per calendar year.

Award of Administrative Law Judge – affirmed and adopted by the Commission, page 6.

On November 17, 2017, the Labor and Industrial Relations Commission (Commission) received employee's "Motion to Compel Compliance with Award" (hereinafter "Motion") alleging that employer/insurer has failed to provide the full extent of future medical treatment as ordered; that employee has incurred out-of-pocket medical and prescription costs, and had to rely on his private insurance to pay most of his medical expenses; and that employee has also incurred mileage expenses in traveling to his treating physician's office. Employee requests the Commission issue an order enforcing the award and compelling employer/insurer to comply with same and reimburse employee the medical, prescription, and mileage expenses he has incurred.

On December 19, 2017, the Commission received employer/insurer's "Motion in Response to Claimant's Motion to Compel Compliance with Award." Therein, employer/insurer alleged it has paid all valid and authorized medical expenses it has received to date. Employer/insurer requests a finding from the Commission that it is in full compliance with the award.

On January 17, 2018, the Commission received from employee, with five numbered exhibits, "Claimant's Reply to Respondent's Response to Claimant's Motion to Compel Compliance with Award." Therein, employee alleges employer/insurer did not begin paying for employee's treatment pursuant to the award until August 2013; that Dr. Middleton's office has moved outside the metropolitan area of St. Joseph, and as a result, employee has incurred mileage expenses in traveling to her office for treatment; that employee has had to use his private insurance and pay out-of-pocket for medications prescribed by Dr. Middleton; that despite multiple demands from

Employee: Scott Curran

- 2 -

employee's counsel for reimbursement of said expenses, employer/insurer has failed to respond or tender same; and that employer/insurer is currently underpaying the costs of employee's treatment with Dr. Middleton by requiring employee to first bill his personal insurance, and then paying any remainder; and that employee is receiving collection notices from the medical provider. Employee requests the Commission order employer/insurer to (1) pay him the sum of \$8,001.43, (2) pay his additional prescription costs and mileage for ongoing treatment with Dr. Middleton's office, (3) pay the full amount of medical treatment employee needs pursuant to the award, and (4) pay any amounts employee's private health insurer may request or seek in reimbursement for amounts it has paid toward employee's awarded care.

On January 23, 2018, the Commission received from employer/insurer, with one exhibit, "Respondent's Response to Claimant's Reply to Respondent's Response to Claimant's Motion to Compel Compliance with Award." Therein, employer/insurer alleges that it has been making payments on behalf of employee dating back to at least May 21, 2012; that employer/insurer has made a total of \$7,681.06 in medical payments to Cameron Regional Medical Center; and that employee has not established the actual distance between his home and Dr. Middleton's office.

On February 6, 2018, the Commission received from employee, with one exhibit, "Claimant's Second Reply to Respondent's Second Response to Claimant's Motion to Compel Compliance with Award." Therein, employee alleges that his charges from Dr. Middleton and Cameron Regional Medical Center extend back to March 14, 2011; that the exhibit attached to Respondent's Response is insufficient, in various respects, to demonstrate that employer/insurer has complied with the award; that employer/insurer does not refute that it is not providing payment for prescriptions or mileage; and that employee has discovered that employer/insurer has failed to pay the award of three weeks for disfigurement pursuant to the award in this matter.

On February 14, 2018, the Commission received from employer/insurer "Respondent's Third Response to Claimant's Second Reply to Respondent's Second Response to Claimant's Motion to Compel Compliance with Award." Therein, employer/insurer disputes and responds to the various allegations set forth in employee's filing of February 6, 2018.

Discussion

Employee's motion to enforce and/or compel compliance with the award

In the case of *State ex rel. ISP Minerals, Inc. v. Labor & Indus. Rels. Comm'n*, 465 S.W.3d 471 (Mo. 2015), the Supreme Court of Missouri made clear that where parties dispute the extent of their respective rights and obligations pursuant to awards or settlement providing for "open" future medical care, the Commission retains jurisdiction to resolve same pursuant to § 287.140 RSMo. Here, though, with respect to awarded treatment, the parties do not appear to dispute, in any fashion, the extent of their respective rights and obligations under the award. Instead, the parties' sole point of contention is whether employer/insurer has actually complied with the (very clear) terms of the award with regard to employee's treatment with Dr. Middleton.

Employee: Scott Curran

- 3 -

Likewise, employee's Motion does not ask the Commission to take up any factual question falling under its authority pursuant to § 287.140 RSMo with respect to a particular treatment modality or other expense not specifically delineated in the award itself. Instead, in each of employee's filings, he ask the Commission to "enforce the award," or "compel" employer/insurer to take some action or tender some payment. However, "the Commission has no power to pronounce a judgment or to enforce a workers' compensation award. Only a court can do so." *Baxi v. United Techs. Auto. Corp.*, 122 S.W.3d 92, 96 (Mo. App. 2003)(emphasis added). It would appear, therefore, that employee's remedy for seeking enforcement of the award now lies in circuit court, pursuant to § 287.500 RSMo, as demonstrated in *Schneidler v. Feeder's Grain & Supply*, 24 S.W.3d 739 (Mo. App. 2000).

Accordingly, to the extent employee's Motion requests that we enforce the award or compel employer/insurer to tender some past due or future medical expense with regard to awarded treatment with Dr. Middleton, or with regard to the award of benefits referable to disfigurement, we must dismiss that portion of employee's Motion, because we lack statutory authority to grant the relief requested.

Employee's claim for travel expenses

On the other hand, the extent of the parties' respective rights and obligations in connection with employee's claim for travel expenses was not addressed in the Commission's award. On this topic, § 287.140.1 RSMo provides, in relevant part, as follows:

When an employee is required to submit to medical examinations or necessary medical treatment at a place outside of the local or metropolitan area from the employee's principal place of employment, the employer or its insurer shall advance or reimburse the employee for all necessary and reasonable expenses[.]

Employee alleges that Dr. Middleton's office moved outside the local or metropolitan area of St. Joseph, and that he has incurred travel expenses in attending the necessary treatment visits awarded by the Commission. Given that the foregoing provision requires that all claimed expenses shall be "necessary and reasonable," and given that the parties dispute employee's ability to prove his entitlement to same, we conclude that the issue of travel expenses is within our authority to determine pursuant to § 287.140 and *State ex rel. ISP Minerals, Inc. v. Labor & Indus. Rels. Comm'n*, 465 S.W.3d 471 (Mo. 2015). Accordingly, we conclude the appropriate action is to remand this matter to the Division of Workers' Compensation (Division) to permit the parties to advance their competing evidence on the issue of travel expenses.

Costs and attorney fees under § 287.560 RSMo

Finally, although we are of the opinion that we lack authority to enter an order enforcing the award of future medical treatment, or to otherwise compel the parties to take action in connection therewith, the Commission does retain discretion under § 287.560 RSMo to order an award of costs, including attorney fees, where it appears "that any proceedings have been brought, prosecuted or defended without reasonable ground."

Employee: Scott Curran

Given the starkly conflicting factual allegations presented by the parties with regard to whether employer/insurer has fulfilled its obligations pursuant to the award, we conclude that the issue of costs and attorney fees is ripe with respect to the proceedings that began in this matter with the filing of employee's Motion of November 17, 2017.

Order

This matter is remanded to the Division for a hearing before an administrative law judge to take evidence as to the facts alleged in the parties' filings concerning employee's claim for necessary and reasonable travel expenses pursuant to § 287.140.1 RSMo.

Additionally, the administrative law judge may take evidence from the parties relevant to the issue whether either party has brought, prosecuted, or defended any post-award proceedings without reasonable ground for purposes of § 287.560 RSMo, along with evidence sufficient to permit the Commission to determine the appropriate amount of an award of costs, including attorney fees.

Mediation may be pursued at the discretion of the administrative law judge assigned to the matter. Should the parties resolve their dispute, the parties are directed to advise the Commission that further proceedings are unnecessary. Any formal settlement agreement reached by the parties should be forwarded to the Commission for approval pursuant to § 287.390 RSMo.

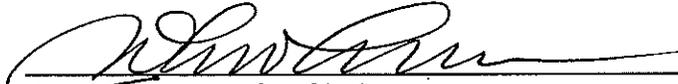
The parties shall be afforded a reasonable opportunity to conduct necessary discovery in advance of the hearing.

At the close of the hearing, the file shall be returned to the Commission for a determination. At that time, the parties will have the opportunity to prepare and submit written legal argument in support of their respective positions.

Given at Jefferson City, State of Missouri, this 1st day of March 2018.



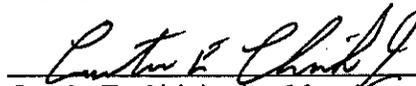
LABOR AND INDUSTRIAL RELATIONS COMMISSION



John J. Larsen, Jr., Chairman

VACANT

Member



Curtis E. Chick, Jr., Member

Attest:


Secretary