

O R D E R

Injury No.: 11-111928

Employee: Adam Jones
Employer: Cunningham Sandblasting & Painting Co., Inc.
Insurer: Commerce & Industry Insurance Co.

Introduction

On June 19, 2017, an administrative law judge approved a Stipulation for Compromise Settlement (Settlement) between the parties. Among other things, the parties agreed that employer/insurer would provide lifetime future medical care to cure and relieve employee's work-related injury to his lower back pursuant to § 287.140, RSMo.

On October 16, 2018, the Labor and Industrial Relations Commission (Commission) received from employee a Motion to Compel Payment of Medical Expense, to Compel the Provision of Medical Treatment, and for Costs (Motion to Compel). Therein, employee alleges, "For reasons unknown to the claimant, his bills for medication have not been paid, medications have not been timely provided, and the treatment which has been recommended, including the referral to pain management, has not been provided."

The Motion to Compel further alleges that employer/insurer's "failure and refusal to provide medication and treatment has endangered the claimant's health." Employee also requests the imposition of costs.

On November 2, 2018, the Commission received Employer/Insurer's Response in Opposition to Claimant's Motion to Compel Payment of Medical Expense, to Compel the Provision of Medical Treatment, and for Costs (Response). Therein, employer/insurer denies employee's allegation that employer/insurer has failed to pay for medication requests. Employer/insurer also denies the allegation that employee's medications were delivered untimely. Employer/insurer admits that it has yet to approve a referral for pain management because it is still investigating if the pain management is related to employee's work-related injury. Employer/insurer denies the allegation that costs are appropriate.

Discussion

Employee's Motion to Compel requests that the Commission enter an order directing employer/insurer to take action in connection with the parties' Settlement. However, it is axiomatic in Missouri that "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). Because the Commission is not authorized to "compel" employer/insurer to take any action in connection with the parties' Settlement, it would appear that employee's remedy for seeking enforcement of the terms thereof 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).

On the other hand, the Supreme Court of Missouri has instructed that the Commission has jurisdiction "to determine the extent of [an employee's] entitlement to workers' compensation benefits pursuant to a settlement [or award] that expressly leaves the issue of future medical care 'open' and indeterminate." *State ex rel. ISP Minerals, Inc. v. Labor & Indus. Rels. Comm'n*, 465 S.W.3d 471, 474 (Mo. banc 2015). When the issue arises of what future medical care an employee needs, the Commission is able to consider the matter. The Commission's jurisdiction

Employee: Adam Jones

allows it to determine the extent of future medical care and to issue awards accordingly. In such circumstances, it is proper to remand the matter to the Division of Workers' Compensation for an evidentiary hearing.

Here, employee only vaguely alleges that employer/insurer has not provided medication and treatment in a timely manner and that such failure has endangered employee's health. Employee does not clearly describe any actual dispute or specific claim for future medical benefits in his Motion to Compel. For example, employee does not provide any specific information identifying which medications were not paid for or timely provided.

Employee referenced in his Motion to Compel a referral in February 2018 for pain management. However, there was no allegation that the referral for pain management was related to employee's work-related injury. Furthermore, according to the Response, employer/insurer has not denied the referral, but is still investigating to determine that the pain management is needed to cure and relieve the effects of employee's work-related injury. Therefore, there is no actual dispute on that issue for this Commission to resolve.

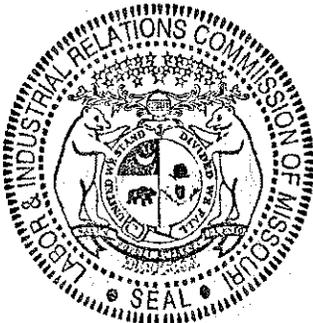
Under the circumstances presented before us with the Motion to Compel and the Response, and in an attempt to reserve the resources of the Division for clearly disputed and presently justiciable issues, we dismiss the Motion to Compel without prejudice. We encourage parties to work together to resolve any disputes they may have. If parties are unable to resolve their differences, then they can submit a new motion, identifying specific disputed and presently justiciable issues regarding what future medical care employee needs to cure and relieve the effects of employee's work-related injury.

Order

For the reasons set forth above, we dismiss employee's Motion to Compel.

Given at Jefferson City, State of Missouri, this 14th day of December 2018.

LABOR AND INDUSTRIAL RELATIONS COMMISSION



[Handwritten Signature]
Robert W. Cornejo, Chairman

[Handwritten Signature]
Reid K. Forrester, Member

DISSENTING OPINION FILED
Curtis E. Chick, Jr., Member

Attest:

[Handwritten Signature]
Secretary

Employee: Adam Jones

DISSENTING OPINION

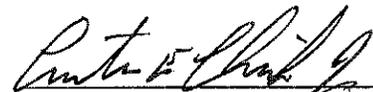
I disagree that employee's Motion to Compel Payment of Medical Expense, to Compel the Provision of Medical Treatment, and for Costs (Motion to Compel) is insufficient to establish the existence of a legitimate dispute regarding what future medical care employee needs to cure and relieve the effects of employee's work-related injury.

Because this Commission has the sole jurisdiction to determine what future medical care employee needs to cure and relieve the effects of the injury, when there is a dispute, I believe it is an abuse of discretion for this Commission to dismiss a motion to decide such issue identified by the parties. The Motion to Compel and the Response identify the disputed issues of whether employer/insurer is appropriately approving and timely providing medication and treatment, including pain management, as mandated by the Stipulation for Compromise Settlement.

Employee specifically identified a request for pain management that employer/insurer has yet to approve over six months after employee's request. It is unreasonable to require employee to resubmit a new motion before the Commission remands this matter to the Division of Workers' Compensation to determine what future medical care employee needs to cure and relieve the effects of employee's work-related injury.

In such circumstances, it is proper to remand the matter to the Division of Workers' Compensation for an evidentiary hearing.

Therefore, I respectfully dissent.


Curtis E. Chick, Jr., Member

