

ORDER

Injury No.: 10-046288

Employee: Matthew Oldham
Employer: Cintas Corporation
Insurer: Fidelity & Guaranty Insurance Company

On November 7, 2017, an administrative law judge approved a Compromise Settlement (Settlement) between employee and employer/insurer in this workers' compensation case. Among other things, the Settlement provided that future medical would be left open at the discretion of employer/insurer until such time as the employer/insurer in agreed to fund a Medicare Set-Aside (MSA) trust.

On June 29, 2018, the Labor and Industrial Relations Commission (Commission) received from employee a Motion to Determine Entitlement to Future Medical Treatment Pursuant to the Compromise Settlement of November 7, 2017 (Motion). Therein, employee alleges that, since the date of the Settlement, employer/insurer have had notice that employee is in need of additional work-related medical treatment for his shoulders, but that employer/insurer have failed and refused to provide same, or to fund an MSA trust. Employee requests the Commission order a hearing to determine employer/insurer's liability for future medical treatment.

The Supreme Court of Missouri has declared that this Commission has jurisdiction over disputes arising from awards or settlements where the issue of future medical treatment is left "open" or otherwise indeterminate. See *State ex rel. ISP Minerals, Inc. v. Labor & Indus. Rels. Comm'n*, 465 S.W.3d 471 (Mo. 2015). Here, though, apart from the vague and conclusory statements recited above, employee provides no factual allegations in his Motion relevant to the issue of disputed future medical treatment.

Employee does not identify the nature of any disputed treatment(s) that employer/insurer has failed to provide, nor does employee identify the practitioner who recommends such treatment(s). Nor does employee explain why such treatment(s) should be seen as falling within employer/insurer's obligations pursuant to the Settlement, such as whether any medical opinion exists that the disputed treatment(s) should be found to be reasonably required to cure and relieve the effects of the work injury.

Employee does not identify the steps he has taken (if any) to secure authorization for such treatment(s) from employer/insurer, or the timing, nature, or form of any denial(s) from employer/insurer. Employee does not provide a timeline of any dispute over open medical treatment that would suggest employer/insurer's conduct amounts to an actual refusal to comply with the Settlement as opposed to a good faith disagreement over the treatment(s) to which employee is entitled under the Settlement.

Employee: Matthew Oldham

We are reluctant to burden the Division of Workers' Compensation (and opposing parties) with proceedings on remand except where there exists a legitimate, presently judicable factual dispute over the provision of future medical care. Accordingly, we will not order a remand hearing where the movant fails to allege the particular facts and circumstances that would, if proven true, support an order from this Commission in his or her favor.

Order

Employee's Motion is hereby denied for failure to state a prima facie claim for relief that the Commission would be authorized to provide.

This order should not be read as preventing employee from hereafter filing with the Commission a motion that does state a prima facie claim for relief with respect to the issue of open medical expenses pursuant to the Settlement.

At minimum, employee should identify the particular disputed treatment(s) and identify the practitioner(s) who recommend employee receive such treatment(s); explain why the disputed treatment(s) should be seen as falling within employer/insurer's obligations under the Settlement; and provide a timeline of the dispute over employer/insurer's (alleged) failure or refusal to authorize the treatments, including the steps (if any) employee has taken to secure authorization of such disputed treatment(s), as well as the timing, nature, and form of any denial(s) from employer/insurer.

Given at Jefferson City, State of Missouri, this 22nd day of August 2018.

LABOR AND INDUSTRIAL RELATIONS COMMISSION



NOT SITTING

John J. Larsen, Jr., Chairman

Reid K. Forrester

Reid K. Forrester, Member

Curtis E. Chick, Jr.

Curtis E. Chick, Jr., Member

Attest:

Danella M. Hoffman
Secretary