

O R D E R

Injury No.: 05-058991

Employee: Ozie Prier
Employer: Doe Run Company
Insurer: American Home Assurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

Introduction

On September 27, 2012, the Labor and Industrial Relations Commission (Commission) issued an award affirming, with a supplemental opinion, an administrative law judge's award which allowed compensation to employee in this workers' compensation case. Among other things, the administrative law judge's award, as adopted by the Commission, memorialized the following stipulation by the parties with regard to the issue of future medical care:

The parties agreed that employer is responsible to provide future medical care for the employee that is reasonably necessary to cure and relieve the employee's injuries from the May 25, 2005 work accident. It is agreed this future medical care includes pain management as is presently being provided by Dr. Guarino. ...

The parties stipulated that employer-insurer shall be responsible for future medical care consisting of pain management care and such other care that is authorized and ordered by Dr. Guarino. Because of the injuries to his neck as well as his right shoulder, the employee is in need of the care that is presently being provided by Dr. Guarino. Therefore the employee is awarded future medical treatment to be provided by the employer-insurer.

Award, pages 3 and 23.

On May 30, 2018, employer/insurer filed a Motion to Stop Medical Treatment (hereinafter Motion) alleging that on February 9, 2017, employee was diagnosed with a herniated cervical disc at C3-4, for which he underwent a March 30, 2017, surgery; that the treating surgeon, Dr. Boland, opined the C3-4 herniation is not related to the work injury; that an independent medical examination (IME) on August 25, 2017, by a non-operative spine specialist, Dr. Boutwell, recommended no further cervical epidural steroid injections because they had not been of significant benefit; that Dr. Guarino provided cervical epidural steroid injections on July 20, 2017, December 6, 2017, and January 8, 2018; that Dr. Guarino indicated on January 23, 2018, that he would only stop providing injections if employee agreed; and that an IME on May 11, 2018, by Dr. Kitchens indicated that employee's current complaints are not related to the work injury, but instead chronic degenerative changes. Employer/insurer requests that the

Employee: Ozie Prier

-2-

Commission enter an order authorizing it to stop treatment by Dr. Guarino, because it is unrelated to the work injury, and may be detrimental to employee's health, because Dr. Guarino has been prescribing opioid medications for a number of years. Alternatively, employer/insurer argues the Commission erred in awarding treatment from Dr. Guarino, because the Commission exceeded its authority by denying employer/insurer the right to select treatment providers. Employer/insurer attaches a number of medical records and IME reports to its Motion.

On June 6, 2018, employee filed his Motion to Quash Employer/Insurer's Motion to Stop Medical Treatment, arguing that employer/insurer's Motion is not authorized by statute or regulation; that the final award is the law of the case and not subject to further proceedings; that employer/insurer has harassed employee by subjecting him to multiple IMEs, by contesting treatment, and by attempting to influence Dr. Guarino's opinions; and that the purpose of employer/insurer's motion is to further harass employee, and that the cost of this proceeding should be assessed against employer/insurer pursuant to § 287.560 RSMo.

Discussion

The Supreme Court of Missouri has made clear that the Commission retains jurisdiction over awards or settlements that leave the issue of future medical treatment "open" or otherwise indeterminate. See *State ex rel. ISP Minerals, Inc. v. Labor & Indus. Rel. Comm'n*, 465 S.W.3d 471 (Mo. 2015). Here, though, the parties did not leave the issue of future medical treatment "open." Instead, they expressly agreed that employer/insurer would provide future treatment in the form of pain management care and such other care that is authorized and ordered by Dr. Guarino. Accordingly, we must closely examine employer/insurer's Motion to determine whether it has pled facts sufficient to warrant any relief that this Commission would be authorized to provide.

Employer/insurer asks the Commission to enter an order allowing it to stop providing treatment recommended by Dr. Gaurino. Employer/insurer alleges that employee doesn't need any more treatment referable to the work injury; instead, such treatment need is related to the 2017 herniation or surgery, or to chronic degenerative changes, as suggested by Dr. Kitchens. Alternatively, employer/insurer alleges Dr. Guarino's treatment is harmful to employee. But the materials attached to employer/insurer's Motion do not provide substantial support for any of these factual propositions.

Employer/insurer's Motion omits critical detail concerning the IME it procured from Dr. Boutwell. Although Dr. Boutwell does indicate that cervical epidural steroid injections have not been of significant benefit to employee, and would thus recommend discontinuing them, she *specifically recommends* that employee continue receiving treatment, including prescription pain medications, to cure and relieve the effects of the work injury:

I do believe that the treatment recommended will be necessary to cure and relieve [employee] from the effects of the 5/25/2005 work injury. This again includes the rare position of advocating for continued use of his

Employee: Ozie Prier

-3-

hydrocodone if need be. I do not believe that he abuses the medications on any level.

See *Employer/Insurer's Motion, Attachment 3*.

Dr. Boutwell does encourage that employee attempt to reduce the hydrocodone as much as possible, something Dr. Guarino's records suggest he also favors and will continue to discuss with employee. However, Dr. Boutwell makes unequivocally clear that she believes employee remains in need of pain management to cure and/or relieve the effects of the work injury. In other words, Dr. Boutwell's IME provides *no* support for employer/insurer's Motion.

Meanwhile, the extent of the analysis provided by Dr. Kitchens is as follows:

It is my opinion, within a reasonable degree of medical certainty, that [employee's] current complaints are related to the chronic degenerative changes of the cervical spine and are not related to the May 25, 2005, work injury. I do not recommend additional treatment as it relates to the May 25, 2005, work injury.

See *Employer/Insurer's Motion, Attachment 5*.

Dr. Kitchens does not attempt to identify the early 2017 herniation or surgery as an intervening cause for employee's treatment needs, instead, he identifies chronic degenerative changes as the basis for employee's current complaints. But Dr. Kitchens does not provide any explanation for this conclusory opinion. Nor does Dr. Kitchens recognize employer/insurer's prior stipulation that it was liable for pain management treatment, or allege that anything has changed from the date that employer/insurer entered that stipulation, to the present day. Thus, even if we were persuaded to credit this opinion from Dr. Kitchens, we are concerned that it amounts to an attempt to relitigate an issue stipulated by the parties at the time of hearing in this matter. Finally, we note that Dr. Kitchens does not provide any support for (or even mention) employer/insurer's allegation that Dr. Guarino's treatment may be detrimental to employee's health.

Assuming, for the sake of argument, that we are authorized pursuant to the *ISP Minerals* decision to revisit the parties' stipulation in this case, we are not inclined to burden the Division of Workers' Compensation (or opposing parties) with additional proceedings where, despite two IMEs, the moving party is unable to advance competent and substantial evidence that would support factual findings in its favor. We conclude that employer/insurer's Motion fails to state a prima facie claim for relief of the sort this Commission would be authorized to provide.

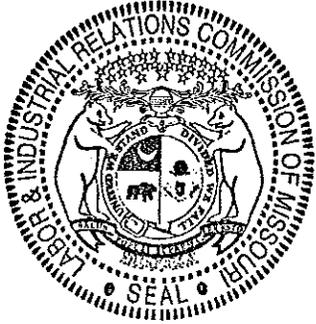
Order

For the reasons set forth herein, employer/insurer's Motion is denied.

Employee: Ozie Prier

Given at Jefferson City, State of Missouri this 25th day of July 2018.

LABOR AND INDUSTRIAL RELATIONS COMMISSION



John J. Larsen, Jr., Chairman

SEPARATE OPINION FILED

Reid K. Forrester, Member

Curtis E. Chick, Jr., Member

Attest

Secretary

Employee: Ozie Prier

DISSENTING OPINION

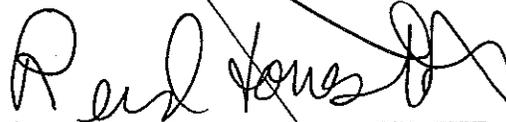
I have reviewed the employer/insurer's Motion to Stop Medical Treatment and employee's responsive filing. Based on my review of this file as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I disagree with the majority's decision to deny employer/insurer's Motion.

I believe employer/insurer's Motion is sufficient to warrant a remand to the Division of Workers' Compensation (Division) for an evidentiary hearing on the issue whether employee's future medical treatment should continue to be provided by Dr. Guarino. Employer/insurer notes that Dr. Guarino has been prescribing opioid medication to employee for over a decade. Given that our state is currently struggling with nothing less than a public health crisis brought on by the widespread use of opioid medications, this fact, standing alone, strikes me as prima facie evidence warranting further investigation as to the efficacy of the pain management model pursued by Dr. Guarino.

To be clear, I share in the Commission majority's concern that parties should not be permitted to challenge their prior agreements simply by filing post-award motions with the Commission. But I don't read employer/insurer's Motion as a request to challenge the parties' prior agreement that employer/insurer would provide employee with the future medical care he needs. Instead, employer/insurer is seeking a reasonable assessment whether employee's treatment continues to be effective, whether there may be some non-work-related injuries or conditions contributing to his condition, and whether employer/insurer may be able to better direct employee's ongoing treatment needs with a doctor of its own choosing.

To that end, it's worth noting that the Commission remains authorized to investigate and to order a change in the employee's medical care where there is a reasonable basis for believing his life, health, or recovery may presently be endangered by the type of care he is receiving, pursuant to § 287.140.2 RSMo. With this employee taking hydrocodone (and a number of other narcotic drugs) for many, many years, I believe it would be in his best interest to have Dr. Guarino's treatment modalities reviewed by the Commission, to determine whether some change may be warranted pursuant to § 287.140.2.

I would remand this matter to the Division to take evidence as to the facts alleged in employer/insurer's Motion. Because the majority has determined otherwise, I respectfully dissent.



Reid K. Forrester, Member

