

NO. A06-1344

State of Minnesota
 In Supreme Court

Connie C. Reider,

Employee-Respondent,

vs.

Anoka-Hennepin ISD #11,
 Self-Insured,

Employer-Relator,

and

Blaine Chiropractic Center, P.A.,
 Noran Neurological Clinic,

Intervenors,

and

Insurance Federation of Minnesota,

Amicus Curiae.

REPLY BRIEF OF RELATOR

LAW OFFICE
 OF THOMAS MOTTAZ
 Thomas D. Mottaz (#129975)
 David B. Kempston (#229738)
 2150 Third Avenue North, Suite 220
 Anoka, MN 55303
 (763) 421-8226

Attorneys for Respondent

LYNN, SCHARFENBERG & ASSOC.
 Andrew W. Lynn (#65614)
 P.O. Box 9470
 Minneapolis, MN 55440
 (952) 838-4451

Attorneys for Amicus Curiae
Insurance Federation of Minnesota

CRONAN PEARSON QUINLIVAN P.A.
 Kirk C. Thompson (#162024)
 1201 Marquette Avenue
 Suite 110
 Minneapolis, MN 55403
 (612) 332-1300

Attorneys for Relator

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The brief argument advance below shall constitute the **Reply Brief of Relator**.

ARGUMENT

MINN. STAT. 176.155, SUBD. 2 CLEARLY AND UNEQUIVOCALLY GRANTS A PARTY TO A WORKERS' COMPENSATION DISPUTE THE MANDATORY RIGHT TO EXAMINATION BY A NEUTRAL PHYSICIAN AND ANY RELIANCE BY THE EMPLOYEE ON MINN. STAT. 176.391 TO CLAIM THAT THE RIGHT TO A NEUTRAL PHYSICIAN IS NOT MANDATORY IS MISPLACED.

The Employee argues, in part, that Minn. Stat. 176.155, subd. 2 does not grant a party the mandatory right to a neutral medical examination because Minn. Stat. 176.391, subd 2. states that a “compensation judge assigned to a matter... may appoint one or more neutral physicians or surgeons to examine the injury of the employee and report thereon.” The WCCA also relied on Minn. Stat. 176.391 in reaching its decision (see Relator’s Appendix, p. A-42). As is shown below, sections 176.155, subd. 2 and 176.391 have different purposes and it is very hard to understand how Minn. Stat. 176.391 could be interpreted as having anything at all to do with the mandatory provisions of Minn. Stat. 176.155, subd. 2. The text of Minn. Stat. 176.155, subd. 2 is reproduced at Relator Appendix, page A-59. The text of Minn. Stat. 176.391 is reproduced at Respondent Appendix, page A-1.

Minn. Stat. 176.391 simply authorizes a compensation judge to order a neutral medical examination as part of an “investigation”. In other words, if as part of an investigation an interested party questioned the judge’s authority to appoint a neutral examiner, the judge could rely upon Minn. Stat. 176.391, subd. 2 as authority to order a neutral examination. The language of Minn. Stat. 176.391 quite obviously has nothing to

do with the right of a party to a neutral examination, as section 176.391 says absolutely nothing about parties and their rights.

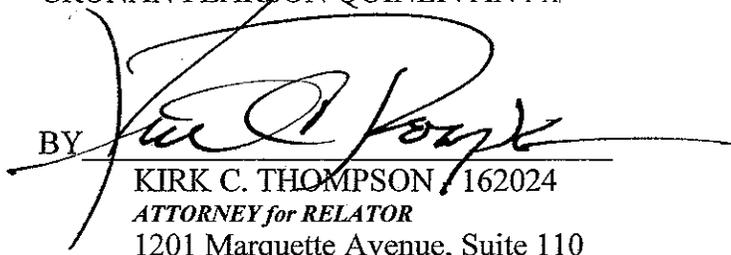
It is Minn. Stat. 176.155, subd. 2 which addresses the rights of a party to a neutral examination. As noted in Relator's brief, the right of a party under Minn. Stat. 176.155, subd. 2 is mandatory if timely requested. The fact that Minn. Stat. 176.391, subd. 2 authorizes a judge to order a neutral medical examination as part of an official "investigation" has nothing to do with whether a party has a right to a neutral medical examination under Minn. Stat. 176.155, subd. 2. The argument of the Employee and decision of the WCCA that Minn. Stat. 176.391 should be interpreted to invalidate the mandatory provisions of Minn. Stat. 176.155, subd. 2 is simply wrong. Minn. Stat. 176.391 has absolutely nothing to do with the right of a party to a neutral medical examination under Minn. Stat. 176.155, subd. 2 and it is misleading and wrong to claim otherwise.

The Anoka-Hennepin School District, ISD #11, respectfully requests that the Minnesota Supreme Court reverse the decision of the Workers' Compensation Court of Appeals and order that a neutral medical examination must take place, followed by a new hearing before a new compensation judge.

DATED: September 20, 2006

CRONAN PEARSON QUINLIVAN P.A.

BY



KIRK C. THOMPSON, 162024
ATTORNEY for RELATOR
1201 Marquette Avenue, Suite 110
Minneapolis, MN 55403
612/332-1300, ext. 104
FAX - 612/332-3229