

TIMOTHY M. BAXTER, Employee/Appellant, v. BRUCE S. ALLEN/PROP-A-GANDA and MN ASSIGNED RISK PLAN/BERKLEY ADM'RS, Employer-Insurer.

WORKERS' COMPENSATION COURT OF APPEALS
OCTOBER 2, 1998

HEADNOTES

MEDICAL EXPENSE - REASONABLE & NECESSARY. Where a proposal for installation of an air conditioning and filtration system prescribed to ameliorate the effects of the employee's industrial asthma condition included costs for installation of non-prescribed improvements, including a new heating system, the compensation judge did not err in denying approval for the installation proposal, despite having determined that the prescribed items were reasonable and necessary.

Affirmed.

Determined by Johnson, J., Hefte, J., and Wheeler, C.J.
Compensation Judge: Carol A. Eckersen

OPINION

STEVEN D. WHEELER, Judge

The employee appeals from the compensation judge's finding that he failed to prove the reasonableness and necessity of the expenses of the installation of an air conditioning, heating and air filtration system. We affirm.

DECISION

This case comes before the court on the limited question whether the compensation judge erred in determining that the employee had failed to prove the reasonableness and necessity of the specific expenses requested for installing an air conditioning, heating and air filtration system as set forth in a work proposal prepared by Minnegasco.

On October 19, 1995, the employee, Timothy M. Baxter, sustained a work-related exacerbation of a pre-existing asthma condition in the course and scope of his work for the employer, Prop-A-Ganda. Dr. Paul Steinberg, the employee's allergist, subsequently prescribed the installation in the employee's home of central air conditioning incorporating a high-efficiency air filtering system. The employer and insurer disputed the reasonableness and necessity for this system, based upon the opinion of Dr. Jack Shrouts, who considered the need for such a system to be wholly related to the employee's preexisting condition, rather than the work-related exacerbation. The employee relied, in part, upon the opinion of Dr. Conrad Iber, who opined that the employee's need for the air conditioning system was necessitated by the employee's

occupational exposure and consequent sensitization to the environmental asthma triggers. (T. 38-39; Exh. K.1; Exh. 2; Findings 3, 4, 8, 9, 12.)

This issue was one of several considered by a compensation judge of the Office of Administrative Hearings following a hearing on December 9, 1997. The primary focus of the hearing was on other issues not the subject of this appeal. The proposal for the installation of the air conditioning and air filtration system, prepared by Minnegasco, also included costs for the installation of a new central heating unit and ductwork. The total expense for installation was \$5,373.00. (Exh. K.2.) The employee offered no testimony or other evidence to explain the inclusion of these additional expenses. The compensation judge determined that an air conditioning and filtration system, as prescribed by Dr. Steinberg, is reasonable, necessary and causally related to the employee's work injury. This finding is unappealed. The compensation judge found, however, that the employee had failed to prove that the expenses of the Minnegasco proposal were reasonable and necessary. (Conclusion 2.) In her memorandum the compensation judge stated: Dr. Steinberg prescribed central air conditioning but the proposal [from Minnegasco] includes more than just the central air conditioning unit. The employee has not presented an explanation as to why the proposed work by Minnegasco is reasonable and necessary.

On appeal, the employee asks that this court reconsider the factual conclusions of the compensation judge de novo, and further requests that we accept and consider additional evidence, in the form of an affidavit prepared by Mark Thompson, a Minnegasco field service representative who prepared the installation proposal. This court's review of factual findings is limited to a determination of whether such findings are supported by substantial evidence in the record below. Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 37 W.C.D. 235 (Minn. 1984); cf. Gollop v. Gollop, D.D.S., 389 N.W.2d 202, 38 W.C.D. 757 (Minn. 1986); Berge v. Jennie-O Foods, slip op. (W.C.C.A. July 23, 1992). We will not review the matter de novo and will not consider the additional evidence.

The compensation judge determined that the employee had demonstrated that an air conditioning and filtration system was reasonably necessitated by his work-related condition. However, the Minnegasco work proposal included installation of a new central heating system and other associated costs. The employee bore the burden of proving that the proposal was reasonable and necessary, and that was not done with respect to the costs of those items which were not prescribed by Dr. Steinberg. Although some of the individual cost items in the proposal clearly relate only to the air conditioning and filtration systems, and others clearly and entirely do not, there are other costs which presumably combine work involved in each, and the compensation judge could reasonably conclude that the Minnegasco proposal had to be considered as a unitary whole. Under the circumstances, we conclude that the compensation judge was justified denied approval of the Minnegasco proposal. Her denial of the Minnegasco proposal is without prejudice to the employee's right to reassert a claim for such additions and/or changes to the existing heating system necessary to comply with the prescription and air filter by Dr. Steinberg.¹ If the parties

¹ The actual prescription from Dr. Steinberg was never introduced at the hearing. Perhaps the compensation judge was concerned about whether the items on the Minnegasco proposal actually matched what Dr. Steinberg was recommending. We note that Dr. Steinberg's actual prescription was attached as Exhibit A to the post hearing affidavit of Gregory Wiley. Perhaps

are unable to resolve which parts of the proposal satisfy Dr. Steinberg's prescription the employee would be permitted to file a request for approval of a different proposal which satisfies the prescription.

the compensation judge would have been able to resolve this matter had the employee put in sufficient evidence at the time of hearing.