

BETTY J. BILD, Employee, v. INDEP. SCH. DIST. #625, SELF-INSURED/PREFERRED WORKS, Employer-Insurer/Appellants.

WORKERS' COMPENSATION COURT OF APPEALS
APRIL 23, 1999

No. [REDACTED SSN]

HEADNOTES

PRACTICE & PROCEDURE; JURISDICTION - SUBJECT MATTER; STATUTES CONSTRUED - MINN. STAT. § 176.106, SUBD. 7. The commissioner is not empowered to act as a fact finder and an administrative conference is not intended to be a forum for the adjudication of disputed questions of fact. Absent an evidentiary hearing and a record, the Workers' Compensation Court of Appeals is unable to review the factual issues raised on appeal or decide whether the commissioner had jurisdiction to render a final decision in this case. Therefore, the matter must be referred to the Office of Administrative Hearings to schedule a formal hearing before a compensation judge.

Referred to Office of Administrative Hearings.

Determined by Wilson, J., Hefte, J., and Wheeler, C.J.
Compensation Judge: Jacob E. Forsman

OPINION

STEVEN D. WHEELER, Judge

The self-insured employer appeals from an Order on Commissioner's Review of a Medical Dispute Under \$1,500.00. We refer the case to the Office of Administrative Hearings for formal hearing.

BACKGROUND

On October 31, 1988 and April 30, 1990, the employee, Betty J. Bild, sustained admitted personal injuries to the low back arising out of and in the course of her employment for the self-insured employer, Independent School District #625. The employer paid various benefits including wage loss benefits and medical expenses for various periods. Among the medical treatment provided to the employee were six courses of physical therapy with four different physical therapy providers as of December 14, 1993. (Judgment Roll: 2/7/94 Findings & Order: Findings 3, 6.)

On February 23, 1998 the employee filed a Request for Certification of Dispute seeking approval for payment of medical bills for further physical therapy at HealthSouth

apparently rendered during 1997. The employer responded on March 23, 1998, refusing to pay charges associated with this treatment. The employer explained its refusal as follows:

The employee has received numerous courses of physical therapy in the past with only partial relief of her symptoms. At the time of the hearing before Judge Dallner on December 14, 1993, she made a finding that the Employee had undergone six courses of physical therapy with four different physical therapy providers with only partial relief of a temporary nature. Physical therapy this long after the date of the injury is not reasonable, necessary, or causally related to the Employee's work injury. The treatment is beyond the time period during which passive treatment modalities are recommended pursuant to the medical treatment parameter rules, in particular Minn.R. 5221.6200. The treatment expenses should be disallowed.

(Judgment Roll.)

The Department of Labor and Industry certified the matter as a medical dispute, and the employee submitted a Medical Request on March 13, 1998. An administrative conference to resolve the issue was held on May 7, 1998. A representative of the Commissioner of Labor and Industry issued an administrative Order pursuant to Minn. Stat. § 176.106 on June 16, 1998, ordering payment of the disputed medical expenses. On July 1, 1998, the employer filed a Request for Formal Hearing or Commissioner Review Conference. The matter was set on for a Commissioner's Review conference in the St. Paul Settlement Division of the Office of Administrative Hearings. (Judgment Roll.)

The conference was held on July 30, 1998. Following the conference, a compensation judge of the Settlement Division issued an Order on Commissioner's Review of a Medical Dispute under \$1,500.00 in which the judge concluded that the employee had sustained an exacerbation of her injury on October 7, 1997 and that the physical therapy treatment in dispute was both appropriate to cure and relieve the exacerbation and within the treatment parameters. The judge ordered payment of the outstanding medical charges. The judge also noted that the employee's treating physician had recommended that the employee undergo an updated CT scan. In addition to the payment of the disputed charges, the judge further ordered that the employer provide the employee with a CT scan of her lumbar back. (Judgment Roll.)

The self-insured employer appeals from the Order on Commissioner's Review, requesting that this court either refer the matter for formal hearing by the Office of Administrative Hearings or reverse on the merits.

DECISION

The self-insured employer appeals from the merits of the decision, arguing that the treatment provided was in excess of that permissible under the workers' compensation medical

treatment parameters. In addition, the employer argues that the matter does not fall within the jurisdiction provided for the commissioner's review procedure.¹

Underlying Merits of the Claim for Medical Expenses

In Alberts v. Midwest National, 57 W.C.D. 189 (W.C.C.A. 1997), we concluded that a party is entitled to review of a final order of the commissioner issued pursuant to Minn. Stat. § 176.106, subd. 7, by appeal to this court. However, administrative conferences at the Department are not evidentiary hearings and no record or transcript of the proceedings is prepared. Without a formal record or stipulation of fact, this court lacks the ability to determine whether or not any factual determination made by the commissioner is clearly erroneous or unsupported by substantial evidence. Thus we cautioned parties in Alberts that in order to effectuate the parties' appeal rights in such cases, parties availing themselves of the commissioner's review processes for medical disputes under \$1,500.00 should first prepare written submissions which set forth any stipulated facts, the relative positions of the parties, and all relevant documentary evidence, so that after the commissioner decides the medical dispute based on these written submissions, this court can review the commissioner's decision based on that same documentation. The parties in the instant case have not done this. As we further noted in Alberts, where this has not been done, this court has no option but to refer the matter to the Office of Administrative Hearings for de novo proceedings.

The Commissioner's Jurisdiction

The commissioner's jurisdiction to render a final decision under Minn. Stat. § 176.106, subd. 7, is limited to claims for medical benefits of \$1,500.00 or less. Jurisdiction under the statute is further limited to cases "where the only issues to be determined . . . involve liability for past treatment or services that will not affect entitlement to ongoing or future proposed treatment or services under section 176.102 or 176.135." Minn. Stat. § 176.106, subd. 7. In addition, the commissioner lacks jurisdiction under the statute to resolve issues of primary liability or medical causation, which are subject to a de novo hearing before a compensation judge. Minn. Stat. § 176.106, subs. 8, 9. Where the commissioner lacks jurisdiction to render a final decision, the parties are entitled to a de novo hearing at the Office of Administrative Hearings.

¹ The employer's brief also pointed out on appeal that the commissioner had no jurisdiction to consider or order the provision of a lumbar CT scan, which was a prospective medical service not raised in the employee's medical request. The employee, in her responsive brief in this matter, has acknowledged that the CT scan was improperly ordered and concedes that this portion of the commissioner's order is clearly of no force and effect. The parties having agreed on this issue, we need not consider it in this opinion. As the issue of the reasonableness and necessity of a lumbar CT scan was not properly raised or determined below, the employee remains free to raise the issue in the proper forum at a future time.

This court noted in Alberts, supra, 57 W.C.D. 189, that a determination of whether the commissioner has jurisdiction to render a final decision pursuant to Minn. Stat. § 176.106, subd. 7, involves issues of both fact and law. Among the questions which may be presented are whether the dispute may affect entitlement to medical benefits exceeding \$1,500.00, whether the dispute may affect a future entitlement to ongoing medical treatment or services and whether there is a primary liability defense or a medical causation issue. In Alberts, we pointed out that without a record to review, we are unable to decide the threshold issue of whether the commissioner had jurisdiction to render a final decision in such cases. Thus, as we pointed out in Alberts, where the parties have not stipulated in writing that the commissioner has jurisdiction to issue a “final” decision under the statute, and factual questions over that jurisdiction exist, this court again has little option but to refer the matter for formal hearing.

In this case, the question of the commissioner’s jurisdiction to issue a final order is disputed and the parties’ allegations disclosed in the medical request and response in this matter raise potential issues of fact which affect the commissioner’s jurisdiction. The employer’s medical response raised the question of a causal relationship between the employee’s injury and the need for the physical therapy treatment at issue. As no record of the proceedings exists, we cannot determine whether or in what manner this issue was adjudicated before the commissioner. Further, the employer defended this matter on the basis that the employee’s recent physical therapy treatment was the continuation of an extensive series of ongoing physical therapy treatments which exceeded the durational limits on such therapy under the treatment parameters. Although the nominal dollar amount in issue for the specific period of treatment sought in the employee’s medical request was less than \$1,500.00, the commissioner’s determination was that the employee had sustained an aggravation to her injury and was entitled to a renewed period of passive treatment. Thus, it may be that the actual value of treatment affected by the commissioner’s determination of this issue, both prospectively and retrospectively, could exceed the \$1,500.00 jurisdictional limit.

Accordingly, we conclude that the case before us contains significant factual and legal issues regarding the commissioner’s jurisdiction to render a final decision pursuant to Minn. Stat. § 176.106, subd. 7. The resolution of these issues would require an evidentiary hearing. The commissioner is not empowered to act as a fact finder. This is the function of the compensation judge. Absent an evidentiary hearing and a record, we are unable to decide whether the commissioner had jurisdiction to render a final decision in these cases. We, therefore, refer this matter to the Office of Administrative Hearings to schedule a hearing before a compensation judge to determine whether the appellants are liable for the claimed medical expenses. Any party may then appeal from the compensation judge’s decision pursuant to Minn. Stat. § 176.421.