PATRICIA SMEBY, Employee/Appellant, v. NORTHWEST MEDICAL CTR., SELF-INSURED/BERKLEY ADM'RS, Employer, and MN DEP'T OF LABOR & INDUS./VRU, Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
FEBRUARY 9, 1999

No. [REDACTED SSN]

HEADNOTES

APPEALS - INTERLOCUTORY ORDER; PRACTICE & PROCEDURE - DISMISSAL. Where the compensation judge dismissed the employee's claim petition without prejudice for lack of medical support, failure to state a compensable claim, and claiming only future medical benefits, the judge's order of dismissal did not affect the merits of the case, was not an appealable order, and was not reviewable by the WCCA, and the employee's appeal from that order was dismissed as being at best premature.

Appeal dismissed.

Determined by Pederson, J., Hefte, J., and Wilson, J.
Compensation Judge: James E. O'Gorman.

OPINION

WILLIAM R. PEDERSON, Judge

The employee appeals from a compensation judge's Order Dismissing Claim Petition served and filed on July 9, 1998. We dismiss the appeal.

BACKGROUND

On May 11, 1998, the employee filed a Claim Petition, alleging or reserving claim to entitlement to various benefits, including wage replacement benefits commencing January 1, 1999, consequent to work-related injuries on March 30, 1992, in the nature of "Back, depression from pain, limitations of injury, carpal tunnel syndrome, upper extremity and lower extremity."[1] On May 29, 1998, the self-insured employer filed an Answer to that petition, which included a motion for dismissal on grounds that the employee had failed to state a compensable claim. On July 9, 1998, the Motion for Dismissal came on for hearing before Compensation Judge James E.

[1] The employer had previously admitted liability for a March 30, 1992, back injury and paid 10.4 weeks of temporary total disability benefits, 122.8 weeks of temporary partial disability benefits, 21 weeks of economic recovery compensation, and medical expenses.

O'Gorman. On that same date, the compensation judge issued an Order Dismissing Claim Petition, specifying that the dismissal was without prejudice. The employee appeals.

DECISION

Minn. R. 1415.1700, subp. 2 (1998), provides as follows: "The judge may, on the judge's own motion or upon motion of a party with notice to the parties, dismiss an action or claim for failure to prosecute; or to substantially comply with this chapter, the act, or an order of a judge." The compensation judge dismissed the employee's petition as "submitted at present" on grounds that it did not present a compensable claim, that it claimed only future benefits, and that it was unsupported by sufficient medical evidence as to the conditions alleged by the employee. The employee argues that the compensation judge abused his discretion in dismissing the petition. We conclude that Judge O'Gorman's order of July 9, 1998, is not an appealable order.

Jurisdiction of this court is statutory and limited. Pursuant to Minn. Stat. § 176.421, subd. 1, parties may appeal to the Workers' Compensation Court of Appeals from "an order or disallowance of compensation or other order affecting the merits of the case" (emphasis added). We concluded several years ago that "[a]n order of dismissal without prejudice does not affect the merits of the case." Dahlquist v. Maxwell Graphics, 47 W.C.D. 424, 427 (W.C.C.A. 1992). Accordingly, we conclude that the compensation judge's dismissal is not an appealable order, that this court lacks jurisdiction to review it, and that the employee's appeal from it is at best premature. The employee's appeal is therefore dismissed.