

RICHARD EBAUGH, Employee, v. WOODREST NURSING HOME and TRAVELERS INS. CO., Employer-Insurer/Appellants, and DAKOTA CLINIC - PARK RAPIDS, Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS  
JUNE 19, 2000

No. [REDACTED SSN]

HEADNOTES

PRACTICE & PROCEDURE - REMAND. The case must be remanded for reconsideration where the compensation judge agreed to leave the record open until February 14, 2000 for submission of the employer and insurer's trial memorandum, but issued his findings and order on February 3, 2000 prior to receipt of the memorandum and closing of the record.

Vacated and remanded.

Determined by: Johnson, J., Wilson, J., and Wheeler, C.J.  
Compensation Judge: James R. Otto

OPINION

THOMAS L. JOHNSON, Judge

Woodrest Nursing Home and Travelers Insurance Companies contend the compensation judge erred in issuing his Findings and Order prior to closing of the record and receipt of the appellant's legal memorandum. We vacate the compensation judge's Findings and Order and remand the case to the compensation judge for reconsideration.

BACKGROUND

Richard Ebaugh, the employee, sustained personal injuries to his back on March 20, 1981 and October 10, 1986, arising out of his employment with Woodrest Nursing Home. The employer was insured by Liberty Mutual Insurance Company on the date of the first injury and Travelers Insurance Companies on the date of the second. In October 1988, the parties entered into a full, final and complete settlement of all the employee's claims from the 1981 and 1986 injuries, with the exception of future medical expenses payable by Travelers Insurance Companies. An Award on Stipulation was served and filed on November 14, 1988.

In July 1999, the employee filed a Medical Request seeking payment of medical bills from the Dakota Clinic in Park Rapids, Minnesota. Travelers Insurance denied liability for the medical expenses. The case was heard by a compensation judge at the Office of Administrative Hearings on January 21, 2000. At the outset of the hearing, the compensation judge received in evidence Exhibits A through H from the employee and Exhibits 1 and 2 from the employer and insurer. The employee was then sworn and testified. At the conclusion of the employee's testimony, the parties rested and the compensation judge adjourned the hearing. (T. 44.)

In support of its appeal, the appellant's counsel, Adam S. Wolkoff, submitted an affidavit. Mr. Wolkoff states in his affidavit that following the testimony of the employee, the compensation judge went off the record. In these off the record discussions, counsel avers the compensation judge accepted Exhibit I, the employee's memorandum of law.<sup>1</sup> Mr. Wolkoff further states the compensation judge, again off the record, agreed to keep the record open until February 14, 2000, to permit the employer and insurer to file a written memorandum. (Aff. of Adam S. Wolkoff). On February 3, 2000, the compensation judge issued a Findings and Order. In the February 3, 2000 Findings and Order, the compensation judge stated the record closed on February 14, 2000.

## DECISION

The employer and insurer contend they were denied their right to a fair hearing because the compensation judge issued a Findings and Order prior to the close of the record and receipt of their memorandum of law. The employee does not dispute the contention that the compensation judge prematurely issued the Findings and Order. He asserts, however, any error by the compensation judge was harmless because the judge's findings are supported by substantial evidence.

A hearing before a compensation judge "shall be conducted in a manner to ascertain the substantial rights of the parties." Minn. Stat. § 176.411, subd. 1. At a minimum, parties to a workers' compensation proceeding must be afforded reasonable notice and an opportunity to respond before decisions affecting entitlement to benefits can be made. Kulenkamp v. Timesavers, Inc., 420 N.W.2d 891, 894, 40 W.C.D. 869, 872 (Minn. 1990). We conclude the compensation judge erred in rendering a decision before the specified time for closing the record. Accordingly, we vacate the compensation judge's Findings and Order and remand the case to the compensation judge for reconsideration. On remand, the compensation judge should afford the appellant a reasonable period of time to prepare and file a responsive memorandum.

The appellants further assert the compensation judge's error entitles it to a new trial before a different compensation judge. The appellants request this court remand the case to a different compensation judge. We find no factual or legal basis to do so. On remand, the compensation judge must reconsider the evidence and applicable law giving consideration to the appellant's memorandum of law. This procedure adequately protects the substantial rights of the parties.

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<sup>1</sup> The file contains a document entitled Employee's Memorandum. It is not marked as an exhibit and the transcript contains no reference to Exhibit I.