

WILLIAM A. FLANAGAN, Employee, v. SOUTHERN MINN. CONSTR. CO. and CNA/TRANSPORT. INS. CO., Employer-Insurer, and MN DEP'T OF ECON. SEC., Intervenor, and BLUE CROSS/BLUE SHIELD OF MINN., Intervenor/Appellant.

WORKERS' COMPENSATION COURT OF APPEALS  
MARCH 2, 2001

No. [REDACTED SSN]

HEADNOTES

PRACTICE & PROCEDURE; SETTLEMENTS. Where the intervening HMO was party to a valid Stipulation for Settlement upon which an Award on Settlement was issued, and where it neither made payment pursuant to nor petitioned to vacate that Award on Settlement, a subsequent Order to Compel the HMO's compliance with the Award on Settlement was superfluous regardless of whether the HMO was properly served with the Order to Compel, and the HMO's appeal from that Order was dismissed. The appropriate course of action for the HMO would be to immediately make the payments agreed upon in the Stipulation for Settlement or to petition to set aside the Award on Settlement "for cause" as provided by Minn. Stat. § 176.461.

Dismissed.

Determined by Pederson, J., Rykken, J., and Johnson, J.  
Compensation Judge: Danny P. Kelly

OPINION

WILLIAM R. PEDERSON, Judge

HMO Minnesota, d/b/a Blue Plus [Blue Plus], appeals from an Order Compelling Compliance with Award on Stipulation issued June 13, 2000. We dismiss the appeal.

BACKGROUND<sup>1</sup>

On January 18, 1996, William Flanagan sustained an admitted work-related injury to his back while working for Southern Minnesota Construction Company. Mr. Flanagan [the employee] was subsequently diagnosed with an L4-5 disc herniation and underwent a lumbar laminectomy at the L4-5 level in March 1996. CNA/Transportation Insurance Company [the

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<sup>1</sup> The facts set forth in this background are drawn from documents found in the judgment roll. These facts are accurate only to the extent that the underlying documents are accurate, and they are not to be construed as factual findings, as there has been no determination by a compensation judge concerning the employee's injury. They are recounted here only to provide some factual context for this decision.

insurer] paid temporary total disability benefits, compensation for a 14% whole body permanent partial disability, and related medical expenses.

The employee's treating physicians subsequently recommended that the employee undergo a two-level spinal fusion at the L4-5 and L5-S1 levels. The employer and insurer disputed the reasonableness and necessity of the prescribed surgery, contending also that the surgery to the L5-S1 level was unrelated to the work injury. On December 8, 1998, the parties in this case, including Blue Plus, entered into a compromise settlement and submitted a Stipulation for Settlement to the Office of Administrative Hearings. Page 4 of the Stipulation provided in part as follows:

- A. The parties hereto stipulate and agree the Employee will undergo the proposed two-level fusion.
- B. The cost of the proposed two-level fusion will be paid by MinnCare administered by Blue Cross/Blue Shield.
- C. The Employer and Insurer shall reimburse MinnCare administered by Blue Cross/Blue Shield for 50 percent of all costs paid to or on behalf of the Employee related to the proposed two-level fusion, subject to the Workers' Compensation Fee Schedule and the Minnesota workers' compensation treatment parameters.

An Award on Stipulation in accordance with this agreement was issued on December 9, 1998, and that Award was served on all signatories to the stipulation, including Blue Plus.

The employee evidently underwent the surgery in question on February 15, 1999. The bills were subsequently submitted to Blue Plus for payment but were denied on grounds that, at the time the bills were incurred, the employee was no longer an eligible enrollee under the medical plan, his coverage having ended effective January 1, 1999.

On February 16, 2000, the employee filed a Motion with the Office of Administrative Hearings, seeking an order compelling Blue Plus to make payment in accordance with the Award on Stipulation. Four months later, on June 9, 2000, Compensation Judge Danny P. Kelly, having received no response from Blue Plus to the employee's Motion, signed an Order Compelling Compliance with Award on Stipulation [Order to Compel]. Three days later, on June 12, 2000, Blue Plus filed a response to the employee's motion, which evidently crossed in the system with Judge Kelly's order, which was served and filed on June 13, 2000.<sup>2</sup>

On September 13, 2000, having been informed of but never served with the Order to Compel, Blue Plus filed a Notice of Appeal and a Motion to Vacate the Order to Compel, contending that the order to compel is prejudicial to their defense, was issued on the merits of the

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<sup>2</sup> According to the Proof of Service in the judgment roll, Judge Kelly's order was not served on Blue Plus.

case without an evidentiary hearing, and is not supported by substantial evidence. Blue Plus has requested that we vacate the Order to Compel and remand the matter to the Office of Administrative Hearings for an evidentiary hearing. We view the Order to Compel as superfluous, deny the request to remand the matter to the Office of Administrative Hearings, and dismiss the appeal.

## DECISION

The parties entered into a valid Stipulation for Settlement that was approved by a compensation judge at the Office of Administrative Hearings, whose award to that effect was served and filed on December 9, 1998. Blue Plus, apparently as early as April of 1999, has contended that it is not required to make payment in accordance with the Stipulation for Settlement. Despite its contentions, Blue Plus has not sought to set aside the Award on Stipulation pursuant to Minn. Stat. § 176.461. We believe that the Order to Compel is superfluous in that it simply directs Blue Plus to make payment in accordance with an already existing order contained in the Award served and filed December 9, 1998. Regardless of whether Blue Plus was properly served with the Order to Compel, the legally significant order pending in this case is that contained in the Award on Stipulation issued December 9, 1998.

We are troubled by Blue Plus's failure either to comply with the terms of the Award on Stipulation to which it was a party or to take any affirmative action to assert its alleged defenses. The appropriate course of action for Blue Plus would be to immediately make the payments agreed upon in the Stipulation for Settlement or to petition this court to set aside the Award of December 9, 1998, "for cause," as provided by Minn. Stat. § 176.461. Therefore, concluding that the Order to Compel is essentially superfluous and that Blue Plus is already subject to an order in the Award on Stipulation here at issue, we dismiss the appeal.