CYNDI S. KLOBUCHAR, Employee, v. UNIV. MED. CTR./ MESABI & HEALTHLINE and STATE FUND MUT. INS. CO., Employer-Insurer/Appellant.

WORKERS' COMPENSATION COURT OF APPEALS
FEBRUARY 6, 2001

No. [REDACTED SSN]

HEADNOTES

PRACTICE & PROCEDURE. Where counsel for the employer and insurer was served with neither a copy of the employee's Medical Request nor a notice of hearing from the Office of Administrative Hearings, the findings and order of the compensation judge are vacated and the case is remanded for another hearing.

Vacated and remanded.

Determined by: Johnson, J., Rykken, J., and Pederson, J.
Compensation Judge: Donald C. Erickson

OPINION

THOMAS L. JOHNSON, Judge

The employer and insurer contend the compensation judge erred by proceeding with a hearing without service of the notice of hearing on the attorney for the employer and insurer. We vacate the compensation judge's Finding and Order, and remand the case to the compensation judge for another hearing.

BACKGROUND

Cyndi S. Klobuchar, the employee, sustained an injury to her right shoulder on February 21, 1998, while working for University Medical Center/Mesabi & Healthline, the employer. The employer and its insurer, State Fund Mutual Insurance Company, admitted liability for the employee's personal injury and commenced payment of benefits.

On March 2, 1998, the employee saw Dr. Mark Wagner at the Hibbing office of the Duluth Clinic. The doctor recorded a history that the employee injured her right shoulder while lifting a large patient in bed. Dr. Wagner diagnosed an impingement syndrome of the right shoulder and took the employee off work. (Pet. Ex. A.) The employee began physical therapy on February 23, 1998, at the Duluth Clinic. (Pet. Ex. D.) On April 29, 1998, the employee was examined by Dr. Michael Gibbons, an orthopedic surgeon, on referral from Dr. Wagner. The doctor reviewed an MRI scan of the employee's right shoulder which he interpreted as showing some thinning of the supraspinatus tendon and evidence of tendinitis but no obvious full thickness tears. Dr. Gibbons injected the employee's right shoulder with Celestone and Lidocaine which provided some mild relief of the employee's pain. The doctor recommended arthroscopy of the

right shoulder to inspect the labrum and debride for a possible labral tear and to assess the anterior capsule for laxity. Depending on the result, the doctor then recommended proceeding with an open acromioplasty. Dr. Gibbons re-examined the employee on July 10, 1998, and again recommended arthroscopy for a possible labral debridement or a labral repair. (Pet. Ex. B.) By report dated October 28, 1999, Dr. Wagner recommended the employee undergo the arthroscopic procedure as recommended by Dr. Gibbons. Again on April 24, 2000, Dr. Wagner recommended surgery but noted the insurer refused to authorize any further care. (Pet. Ex. A.)

On June 9, 1999, the employee retained Thomas R. Longfellow to represent her and signed a retainer agreement. Mr. Longfellow filed a Notice of Appearance of Attorney for Employee with the Minnesota Department of Labor and Industry, Workers' Compensation Division (the Department). (Pet. Ex. E.) On November 18, 1999, Mr. Longfellow apparently wrote Ms. Jean Des Marais at State Fund Mutual Insurance Company requesting authorization for further medical treatment for the employee. By letter dated December 15, 1999, John M. Hollick, Esq., of the firm Lynn, Scharfenberg & Associates, staff counsel for the State Fund, responded to Mr. Longfellow as follows:

> Dear Mr. Longfellow:
>
> Ms. Des Marais forwarded to me your November 18, 1999 letter to her. The letter concerns a request for additional medical treatment for your client, Ms. Klobuchar.
>
> Please be advised that State Fund Mutual is not authorizing the requested medical treatment and surgery with respect to your client. I advised State Fund to submit this issue to the Internal Dispute Resolution of the Managed Care Plan.
>
> In the future, I would ask that you direct any correspondence to my office directly, rather than to my client.
>
> Thank you for your cooperation.

This letter was stamped as received by the Department of Labor and Industry on February 3, 2000.[1]

Thereafter, Mr. Longfellow apparently sought from the Department certification of a dispute under Minn. Stat. § 176.081, subd. 1(c).[2] By letter dated March 24, 2000, the Department

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[1] This file is an imaged file. On June 16, 2000, the Office of Administrative Hearings served a Notice of Certification of Imaged File which stated only the pleadings and orders in the file were printed. Unprinted documents are accessible through the computerized Daedalus system. Mr. Hollick's letter of December 15, 1999 was not a part of the printed file but is part of the unprinted file available through Daedalus.

[2] Minn. Stat. § 176.081, subd. 1(c), provides in part:

wrote Mr. Longfellow and stated the dispute was not certified because the employee's managed care plan required the employee's surgical request be submitted to the internal dispute resolution procedure of the managed care plan. John M. Hollick, Esq., was sent a carbon copy of the Department's March 24, 2000 letter. (App. Br. Ex. 1). On May 10, 2000, the Department issued a Certification of Dispute and sent copies to Mr. Longfellow and Mr. Hollick. (Finding No. 1; App. Br. Ex. 2.) On May 17, 2000, the employee's attorney filed with the Department a Medical Request seeking authorization for further occupational/physical therapy treatment and arthroscopy. Mr. Longfellow served the Medical Request on the employee, the employer and the insurer but not on Mr. Hollick. (See Judgment Roll.) There was no medical response filed by or on behalf of the employer and insurer.

The Office of Administrative Hearings served a Notice of Hearing on the employee, Thomas R. Longfellow and State Fund Mutual Insurance Company on July 10, 2000, scheduling a hearing in Duluth, Minnesota. The case was heard by Compensation Judge Donald C. Erickson on September 5, 2000. There was no appearance at the hearing by the employer and insurer. Mr. Longfellow prepared and submitted to the judge a statement of the claim which listed John Hollick as counsel for the employer and insurer. During the hearing, Mr. Longfellow stated, "I only received the fourth (IME) done by Dr. Litman. I received that from Mr. Hollick. Because I received it from him I presumed that he would be appearing today and that's why I listed him for the employer/insurer on the statement of claim that I supplied to you as part of the exhibit book." (T. 6-7.) In a Findings and Order filed September 5, 2000, the compensation judge found the employee was entitled to authorization for arthroscopic surgery on her right shoulder and ordered the employer and insurer to pay the medical expenses, subject to the fee guidelines. The employer and insurer appeal.

DECISION

The employer and insurer contend the Office of Administrative Hearings erroneously failed to provide its counsel with notice of hearing. Accordingly, the employer and insurer argue the compensation judge committed an error of law by proceeding with the hearing.

Minn. Stat. § 176.341, subd. 3, provides that the "chief administrative law judge shall mail a notice of the time and place of hearing to each interested party." Minn. R. 1415.0700, subp. 1, states:

> Subpart 1. **Service by state**. The division and the office must serve all notices, findings, orders, decisions, or awards upon the parties by first class mail at their addresses of record or by personal service.

Except where the employee is represented by an attorney in other litigation pending at the department or at the office of administrative hearings, a fee may not be charged after June 1, 1996, for services with respect to a medical or rehabilitation issue arising under section 176.102, 176.135, or 176.136 performed before the employee has consulted with the department and the department certifies that there is a dispute and that it has tried to resolve the dispute.

> If the division or office has received notice that a party is represented by an attorney or authorized agent, documents required to be served on the party must also be served on the attorney or agent.

Mr. Hollick did not file a Notice of Representation with the Department, nor did the Office of Administrative Hearings receive notice from Mr. Hollick that he represented the employer and insurer. Since this is an imaged file, only the pleadings and orders were printed, and the Office of Administrative Hearings did not serve Mr. Hollick with the notice of hearing. Minn. R. 1415.0700, subp. 2, entitled "Service by parties," states, in part, "[s]ervice of documents required to be served on a party must also be served on the party's attorney or authorized agent." Mr. Longfellow served the Medical Request on the employee, the employer and the insurer, but did not serve Mr. Hollick.

"Basic fairness requires that the parties in a workers' compensation proceeding be afforded reasonable notice and an opportunity to be heard before decisions concerning entitlement to benefits can be made." Kulenkamp v. Timesavers, Inc., 420 N.W.2d 891, 894, 40 W.C.D. 869, 872 (Minn. 1988). Under these particular circumstances, the employer and insurer are entitled to a new hearing. The findings and order of the compensation judge filed September 5, 2000, are vacated and the case is remanded to the compensation judge for another hearing.