WANDA KUMP, Employee, v. HILLCREST HEALTH CARE CTR., SELF-INSURED/BERKLEY ADM'RS., Employer/Appellant.

WORKERS' COMPENSATION COURT OF APPEALS
JANUARY 29, 2001

No. [REDACTED SSN]

HEADNOTES

COSTS & DISBURSEMENTS - MINN. STAT. § 176.511, SUBD. 1. Where the compensation judge issued an order awarding costs and disbursements in excess of that claimed by the employee, and failed to specifically address the self-insured employer's objections, it is necessary for the compensation judge to reconsider the disputed costs on remand.

Modified and remanded.

Determined by Wheeler, C.J., Wilson, J., and Pederson, J.
Compensation Judge: William R. Johnson

OPINION

STEVEN D. WHEELER, Judge

The self-insured employer appeals from a portion of the Order Granting Taxable Costs and Disbursements. That portion of the Order appealed relates to four cost items totaling $607.52. With respect to the costs incurred at the Mankato Clinic and the Smart Corporation, in the amount of $105.81, the Order is modified to delete the requirement to make payment. The portion related to costs incurred at the Mayo Clinic and Rice Reporting, in the amount of $451.71, is vacated and the matter of these costs is remanded to the compensation judge for resolution.

BACKGROUND

The employee initially sustained an admitted work injury to her right elbow on December 9, 1994, while employed by Hillcrest Health Care Center of Mankato, Minnesota, hereinafter the self-insured employer. At the time of the injury the employee had a weekly wage of $226.20. The employee claimed entitlement to wage loss and medical benefits. The employer admitted the 1994 injury but denied any causal relationship between her work activities and certain ongoing symptoms. In Findings and Order issued May 9, 1997, a compensation judge at the Office of Administrative Hearings found that the employee had sustained a Gillette-type injury[1] culminating on February 14, 1996 which was caused by her work activities. The compensation judge did not make a specific finding concerning the nature of the employee's Gillette injury. These Findings and Order were not appealed.

[1] Gillette v. Harold, Inc., 257 Minn. 313, 101 N.W.2d 200, 32 W.C.D. 105 (1960).

In early 1998, the employee filed a claim petition alleging entitlement to temporary partial disability benefits and permanent partial disability in the amount of 35% of the whole body as a result of "reflex sympathetic dystrophy of right elbow" (RSD) arising out of the December 1994 and February 1996 injuries. The matter came on for hearing before a compensation judge at the Office of Administrative Hearings on March 11, 1999. A few days before the hearing, the self-insured employer agreed to recalculate previously paid temporary partial disability benefits as requested by the employee. At the hearing the self-insured employer reiterated its agreement to pay the underpayment plus interest. An issue concerning temporary partial disability for twenty weeks and penalties for the delay in payment of temporary partial disability were left for the compensation judge's resolution. The judge issued a decision on April 29, 1999, in which he determined that the employee had sustained a 30% whole body permanent partial disability rating for RSD pursuant to a specific part of the disability schedule. In addition, the compensation judge also awarded temporary partial disability benefits for certain selected weeks during the period from May 1997 through July 1998. The judge specifically denied an award of penalties for the delay in the payment of the underpayment of temporary partial disability benefits or failure to pay for the selected weeks awarded in the decision. The self-insured employer appealed from the award of permanent partial disability. In a decision of this court issued on November 9, 1999, the award of permanent partial disability to the employee was reversed. Kump v. Hillcrest Health Care Ctr., No. [REDACTED SSN] (W.C.C.A. Nov. 9, 1999). This decision was not appealed.

On January 27, 2000, the employee's attorney filed a Petition for Actual Costs and Disbursements in connection with the claim for permanent partial disability, temporary partial disability and penalties, in which he sought reimbursement for total costs of $2,373.32.[2] By letter dated February 1, 2000, the self-insured employer filed an objection to four of the claimed costs and disbursements, which totaled $607.52. The specific items are listed as follows:

I. Mayo Clinic charges of April 29, 1998 and December 31, 1998;
II. Rice Reporting charges;
III. Mankato Clinic charges of August 16, 1999; and
IV. Smart Corporation charges of August 24, 1999.

By letter of February 7, 2000, the employee's attorney wrote to the compensation judge stating that he was in agreement with the self-insured employer's objection to the charges related to the Mankato Clinic and the Smart Corporation, which totaled $105.81, as they were incurred after the March 11, 1999 hearing. He specifically reduced his total claim for costs from $2,373.32 to $2,267.51. Employee's counsel, however, stated that the claims for the Mayo Clinic charges and the Rice Reporting charges were appropriate. Based on his statements, we surmise that these costs may have related to the deposition of the employee's physician, Dr. Bengtson. The employee's attorney claimed that the doctor's deposition was useful in successfully pursuing the employee's

[2] The file provided to this court does not contain a copy of the employee's Petition for Actual Costs and Disbursements. Our recitation of facts concerning this Petition is based on subsequent filings and undisputed information contained in the appellate briefs of the parties.

claim for temporary partial disability before the compensation judge.[3] The self-insured employer's objection to these expenses were based on its position that the costs were related solely to the employee's claim for permanent partial disability benefits, a claim on which the employee did not prevail.

No immediate action was taken on the employee's petition or the self-insured employer's objection to the petition. In a separate matter, on March 27, 2000, the self-insured employer's attorney filed a rehabilitation request asking that the employee's qualified rehabilitation consultant (QRC), Bill Hokeness, be removed from the case. On April 3, 2000, the employee filed a rehabilitation response objecting to the request to change QRCs. An administrative conference to address the issue was held on April 26, 2000. As a result of the conference, a designee of the Commissioner of the Department of Labor and Industry issued a decision and order pursuant to Minn. Stat. § 176.106 on April 28, 2000, denying the self-insured employer's request.

Thereafter, on June 5, 2000, the employee's attorney filed a Statement of Attorney Fees, requesting Heaton fees[4] in the amount of $1,365.00. No mention was made of the earlier petition for costs. The self-insured employer did not object to the payment of these fees. On July 24, 2000, the compensation judge issued an Order Granting Attorney Fees and Taxable Costs and Disbursements. He awarded the requested Heaton fees of $1,365.00 and the sum of $2,373.32 for taxable costs and disbursements. The self-insured employer appeals from the award of costs related to the Mayo Clinic and Rice Reporting in the amount of $451.71, and the Mankato Clinic and Smart Corporation, in the amount of $105.81.

DECISION

"The commissioner or compensation judge or on appeal the workers' compensation court of appeals, may award the prevailing party reimbursement for actual and necessary disbursements." Minn. Stat. § 176.511, subd. 2. A party is entitled to only those actual and necessary disbursements that relate to an issue on which that party prevailed. Hodgin v. Ford Motor Co., 341 N.W.2d 567, 569-70, 36 W.C.D. 423, 426 (Minn. 1983). It is within the compensation judge's discretion to make a factual determination regarding which individual disbursements are necessary and directly related to the issues on which the party prevailed. Id.

In this case, the compensation judge issued an order awarding costs and disbursements in the amount of $2,373.32. In making that award, he stated that

> [T]he employee's attorney has petitioned for fees with respect to the Heaton vocational rehabilitation claim and and [sic] non-reimbursed

[3] It is unclear what services are involved in the charges from the Mayo Clinic and Rice Reporting. The employee's attorney's February 7, 2000 letter and brief suggest they relate to a deposition of Dr. Bengtson. The deposition was listed as an exhibit in the transcript of the March 11, 1999 hearing, but was not in the file sent to this court.

[4] Heaton v. J.W. Fryer & Co., 36 W.C.D. 316 (Minn. 1983).

> disbursements with respect to the earlier Findings and Order in this matter issued by the undersigned Compensation Judge; and . . . the employee is entitled to the taxable costs and disbursements claimed in the earlier matter for the reasons set out in the February 7, 2000 letter from Attorney Reitan.

In the Order, the compensation judge made no mention of the self-insured employer's February 7, 2000 objection to several of the cost items claimed.

Based on the lack of specificity in the compensation judge's order concerning the reasons that the charges from the Mayo Clinic and Rice Reporting, totaling $451.71, were included in those awarded, and because the compensation judge awarded costs of $105.81 which had been specifically withdrawn by the employee, there is a question concerning whether the judge thoroughly and carefully reviewed each of the items in the petition for taxation of costs and disbursements and the employee's attorney's letter of February 7, 2000. As a result, it is necessary for us to remand the matter to the compensation judge for his review concerning the specific costs from the Mayo Clinic and Rice Reporting, which are now the only ones still in dispute. The award of reimbursement of costs for the Mankato Clinic and Smart Corporation is deemed a mistake by the compensation judge and the self-insured employer is not required to pay those costs. Should the compensation judge conclude that the costs for the Mayo Clinic and Rice Reporting charges were related to claims on which the employee prevailed, the judge has the discretion to award reimbursement.[5] The compensation judge, in his sole discretion, may request additional evidence or argument.

[5] If the costs from the Mayo Clinic and Rice Reporting do relate to Dr. Bengtson's deposition, the compensation judge is in the best position to determine if the evidence in the deposition was useful in resolving the temporary partial disability claim in the employee's favor. If relevant, the compensation judge should be provided with a copy of the deposition.