

KEITH B. SAWYER, Employee, CIRCUIT SCIENCE and EBI COS., Employer-Insurer, and PHYSICIANS NECK & BACK CLINIC and MEDICA CHOICE/HEALTHCARE RECOVERIES, INC., Intervenors, and MINNEAPOLIS CLINIC OF NEUROLOGY, Intervenor/Appellant.

WORKERS' COMPENSATION COURT OF APPEALS
NOVEMBER 16, 2001

No. [REDACTED SSN]

HEADNOTES

DISMISSAL. Where the appealing intervenor still had not filed a brief nearly three months after the court's receipt of the transcript in the matter, the intervenor's appeal was dismissed on grounds of Minnesota Rules 9800.0900, subpart 1, which provides that "[i]ssues raised in the notice of appeal but not addressed in the brief shall be deemed waived and will not be decided by the court," and Minnesota Rules 9800.1710, which provides for dismissal for failure to timely file a brief under that rule, upon motion of a party or the court's own motion.

Dismissed.

Determined by Pederson, J., Wheeler, C.J., and Rykken, J.
Compensation Judge: Peggy A. Brenden

OPINION

WILLIAM R. PEDERSON, Judge

Intervenor Minneapolis Clinic of Neurology appeals from the compensation judge's denial of certain treatment expenses. We dismiss the appeal for the intervenor's failure to file a brief.

BACKGROUND

Keith Sawyer sustained a work-related injury to his thoracic spine on March 19, 1999, while employed with Circuit Science [the employer]. Subsequent to his injury, Mr. Sawyer [the employee] sought treatment with various providers, which eventually came to including the Minneapolis Clinic of Neurology, pursuant to a recommendation of the employee's family doctor. On March 17, 2000, the employee filed a claim petition, alleging entitlement to various benefits. The matter was eventually heard on June 12, 2001, when issues included whether certain treatment of the employee at the Minneapolis Clinic of Neurology [the intervenor] was reasonable, necessary, and causally related to the employee's March 19, 1999, work injury. By Findings and Order filed July 25, 2001, the compensation judge concluded that some of that treatment was not reasonable, necessary, and causally related to the work injury. The intervenor appeals. The employer and its insurer move for dismissal.

STANDARD OF REVIEW

“[A] decision which rests upon the application of a statute or rule to essentially undisputed facts generally involves a question of law which [the Workers’ Compensation Court of Appeals] may consider de novo.” Krovchuk v. Koch Refinery, 48 W.C.D. 607, 608 (W.C.C.A. 1993).

DECISION

At Finding 17 of her decision, the compensation judge concluded,

Treatment provided by the Minneapolis Clinic of Neurology and the Back to Fitness program was causally related to the employee’s March 19, 1999 work injury—EXCEPT for the brain MRI done December 6, 2000 and the lumbar spine MRI done March 30, 2001. (The preponderance of evidence fails to establish the symptoms/conditions that prompted the brain and lumbar MRIs were causally related to the employee’s March 19, 1999 work injury.[])

At Finding 18 the judge concluded also that “[t]he Functional Capacities Evaluation (FCE) completed at the Minneapolis Clinic of Neurology was reasonable and necessary,” and at Finding 19 the judge concluded that “[t]he preponderance of evidence fails to establish treatment provided at the Minneapolis Clinic of Neurology—other than the FCE was reasonable or necessary.” Consistent with those findings, at Order 6 the judge indicated that “[t]he Minneapolis Clinic of Neurology (except for charges associated with the FCE) shall not collect or attempt to collect charges causally related to the employee’s work injury from the employee, employer/insurer, third party payor or governmental agency.”

In its August 9, 2001, notice of appeal, the intervenor raised the following issue: “Object to denial of dates of service 11-22-00 through 4-24-01 with the exception of 3-27-01; Functional Capacity Test.” On August 29, 2001, Judge Thomas L. Johnson, Administrative Judge of this court, wrote to all parties, including the intervenor, indicating that we had received the transcript in this matter on August 24, 2001, and that “Minn. Rules 9800.0900, subp. 1 requires appellants and cross appellants to file a written brief within 30 days after the court receives the transcript.” The intervenor did not file a brief within the specified thirty days. Minnesota Rules 9800.0900, subpart 1, also provides that “[i]ssues raised in the notice of appeal but not addressed in the brief shall be deemed waived and will not be decided by the court.” On October 9, 2001, the employer and insurer filed a responsive brief and motion to dismiss the intervenor’s appeal on grounds that (1) the intervenor had waived its issues by not filing a brief, (2) substantial evidence supported the compensation judge’s conclusion that the treatment at issue was not reasonable and necessary, and (3) the employer and insurer are entitled to dismissal for the intervenor’s failure to comply with Rule 9800.0900, pursuant to Minnesota Rules 9800.1710. The cover letter affixed to this filing indicates carbon copying to the intervenor.¹ Still finding no appellant’s brief filed,

¹ We find no affidavit of service.

nearly three months after the court's receipt of the transcript in this matter, we dismiss the intervenor's appeal on grounds of Minnesota Rules 9800.0900, subpart 1, and 9800.1710.²

² Minnesota Rules 9800.1710 provides in part as follows:

If any appellant or cross appellant fails to timely file a brief as required by part 9800.0900, any party may move this court for dismissal of the appeal. If the appellant or cross appellant is in default for more than 30 days and no party has moved for dismissal, the court may summarily order the dismissal of the appeal or cross appeal without notice. Dismissals granted or ordered under this part are subject to a motion to reinstate.