DANA VAN MILLIGAN, Employee/Appellant, v. NW. AIRLINES CORP. and LIBERTY MUT. INS. COS., Employer-Insurer.

WORKERS' COMPENSATION COURT OF APPEALS
OCTOBER 11, 2001

No. [REDACTED SSN]

HEADNOTES

PRACTICE & PROCEDURE - PETITION FOR REASSIGNMENT; APPEAL - DISMISSAL. The claims and defenses asserted by the employer and insurer in support of their request to discontinue temporary total disability benefits and their denial of rehabilitation benefits require resolution of many of the same factual issues. In the interest of judicial economy and to avoid inconsistent or conflicting results, this court has ordered that the matters be consolidated for hearing on remand. The employee's appeal from the letter decision denying reassignment of the matter to the original judge is therefore moot, and the appeal is dismissed.

Appeal dismissed.

Determined by Johnson, J., Wilson, J. and Rykken, J.
Compensation Judge: Janice Culnane

OPINION

THOMAS L. JOHNSON, Judge

The employee appeals from the compensation judge's letter decision of June 29, 2001, denying the employee's petition for reassignment of the original block-assigned judge. We conclude the issue is moot and, accordingly, dismiss the appeal.

BACKGROUND

Dana Van Milligan, the employee, sustained an admitted, personal injury to her low back on September 10, 1999, while working for Northwest Airlines Corporation, the employer. On August 23, 2000, the employer and insurer served a Notice of Intent to Discontinue Benefits (NOID) on the grounds that there was no documentation the employee was restricted from work, the employee had withdrawn from the labor market to attend school, and the employee had failed to conduct a reasonable and diligent job search. On September 21, 2000, a compensation judge at the Settlement Division issued an order allowing the employer and insurer to discontinue payment of temporary total disability benefits to the employee.

On September 25, 2000, the employee filed a Rehabilitation Request seeking a rehabilitation consultation and rehabilitation services. The employer and insurer filed a response on October 2, 2000, agreeing the employee was entitled to a rehabilitation consultation, but

denying eligibility for rehabilitation services asserting there was no medical opinion restricting the employee from work; there was no evidence the employee was precluded from engaging in her usual occupation; and the employee had voluntarily withdrawn from the labor market by attending school full time in New Mexico.

On October 27, 2000, the employee filed an Objection to Discontinuance. In a letter response, filed November 2, 2000, the employer and insurer again asserted the employee was not entitled to temporary total disability benefits as there was no medical record indicating the employee was unable to work or totally disabled, the employee was a full time student, and the employee had not conducted a reasonable and diligent job search. A Notice of Expedited Hearing on the Objection to Discontinuance was served on December 5, 2000, scheduling a hearing for January 17, 2001 before an "unassigned" compensation judge.

On December 7, 2000, the employee filed a second Rehabilitation Request seeking statutory rehabilitation services. In a Rehabilitation Response filed December 19, 2000, the employer and insurer again denied eligibility for rehabilitation assistance listing the same defenses raised in their October 2, 2000 response.

The January 17, 2001 hearing was held before Compensation Judge Jennifer Patterson. At the hearing, the employee sought consolidation of the rehabilitation request for hearing with the objection to discontinuance. Counsel for the employer and insurer indicated the insurer was not ready to address the issue and did not agree to expand the issues beyond those raised by the Objection to Discontinuance. (T. 5.) In a Findings and Order, served and filed February 27, 2001, the compensation judge ordered the employer and insurer to pay temporary total disability benefits to the employee from August 21, 2000 through the date of hearing, finding the employee had made diligent efforts to rehabilitate herself. The judge made numerous findings, including findings relating to the employee's restrictions, ability to perform her pre-injury job as a flight attendant, reasonable expectation of a return to work with the employer, enrollment and attendance at school and in a pilot training program, and cooperation with vocational assistance. The employer and insurer filed a Notice of Appeal to this court on March 26, 2001.

On March 1, 2001, a Notice of Hearing was served on the parties[1] scheduling a second hearing before Compensation Judge Patterson on July 17, 2001. The employer and insurer then filed, on March 6, 2001, a Petition for Reassignment pursuant to Minn. Stat. § 176.312. The Office of Administrative Hearings, by a "Notice of Hearing on Rehab" served March 19, 2001, reassigned the case to Compensation Judge Gary Mesna and scheduled a pre-trial conference for May 7, 2001.

[1] The document included in the judgment roll is captioned "Notice of Hearing on Objection to Discontinuance" and recites that an Objection to Discontinuance was filed on October 27, 2000. However, the parties apparently agree the notice was intended to schedule a separate hearing on the employee's Rehabilitation Request.

On May 1, 2001, the employee filed a Petition for Reassignment of the Original Block-Assigned Judge, seeking return of the case to Judge Patterson.[2] The employer and insurer filed an objection, asserting they had properly filed a timely request for reassignment as the employee's request for rehabilitation was a separate issue from the Objection for Discontinuance. On May 18, 2001, Judge Mesna issued an Order Striking from Calendar, concluding the claim for which the July 17, 2001 hearing was scheduled involved issues which were on appeal to the WCCA.

No formal order was issued determining the employee's request for reassignment to Judge Patterson, but in a letter to employee's counsel dated June 29, 2001, Compensation Judge Janice Culnane wrote "the right to petition for reassignment is a statutory provision; however, there is no provision which allows you to petition for [reassignment of ] a particular judge, even if it is the original block-assigned judge." The employee filed a notice of appeal seeking review of this letter and the employer and insurer's petition for reassignment.

DECISION

Under Minn. Stat. § 176.312, any party to a claim may, as a matter of right, file a Petition for Reassignment within ten days after receiving notice of assignment of a case to a compensation judge. Minn. Stat. § 176.307 requires the chief administrative law judge to assign cases to compensation judges using a block system type of assignment that ensures a case remains with the same judge from commencement to conclusion unless the judge is removed from the case by exercise of a legal right of a party.[3] In Millette v. Victoria Grain Co., 55 W.C.D. 416 (W.C.C.A. 1996), this court indicated that if all matters in a prior proceeding have been concluded and the current proceeding involves new issues, a petition for reassignment can properly be filed.

Pending at the same time as this appeal was the employer and insurer's appeal from Compensation Judge Patterson's Findings and Order on the employee's objection to discontinuance. Concluding the judge misapplied the law in making her determination, this court has vacated and remanded the case for redetermination. In so doing, this court held that factual issues relating to rehabilitation or vocational services provided or obtained (or the lack thereof), the employee's enrollment in school and/or participation in a retraining program, the employee's restrictions and ability to return to work in her pre-injury job or other employment, any reasonable expectations regarding a return to work with the employer, and other similar issues are appropriately before the compensation judge in determining whether the employer and insurer have established a basis for discontinuance on the grounds that the employee voluntarily withdrew from the labor market by attending school or participating in a non-approved retraining plan and failed to conduct a reasonably diligent job search.

The claims and defenses asserted by the employer and insurer in support of discontinuance and their denial of rehabilitation benefits require resolution of many of the same

[2] There is no copy of this document in the paper record before this court or in the computer filing system maintained by the Department of Labor and Industry.

[3] The block system may be supplemented by other systems of case assignment to ensure cases are timely decided.

factual issues. In the interest of judicial economy and to avoid inconsistent or conflicting results, we have directed that the matters be consolidated for hearing on remand. The employee's appeal is therefore moot, and we, accordingly, dismiss the employee's appeal.