

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 43

WCC No. 9407-7089

EBI/ORION GROUP (CONNECTICUT INDEMNITY)

Petitioner

vs.

MICHAEL S. BLYTHE

Respondent.

ORDER FOR INDEPENDENT MEDICAL EXAMINATION

Summary: Claimant alleging disability due to a mental condition arising from a physical injury objected to insurer's request for an independent medical examination by a Ph.D. psychologist who was not a medical doctor. Claimant also objected on various procedural grounds.

Held: Where claimant's mental condition is at the center of the controversy between the parties, an IME concerning his mental condition is appropriate and reasonable. While section 39-71-605, MCA (1993) refers to an independent medical examination by a "physician," other provisions of the Workers' Compensation Act make clear that "physician" is used in a broad sense, encompassing not only M.D. physicians but also chiropractors, physician assistants, and dentists. Given this context, and practice in the workers' compensation field for IME panels to include Ph.D. psychologists, the requested IME is proper.

Topics:

Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: section 39-71-605, MCA (1993). Where claimant alleges disability due to a mental condition arising from a physical injury, an independent medical examination concerning his mental condition is appropriate and reasonable. While section 39-71-605, MCA (1993) refers to an IME by a "physician," other provisions of the Workers' Compensation Act make clear that "physician" is used in a broad sense. Given this context, and

practice in the workers' compensation field for IME panels to include Ph.D. psychologists, the requested IME is proper.

Independent Medical Examination (IME): Generally. Where claimant alleges disability due to a mental condition arising from a physical injury, an independent medical examination concerning his mental condition is appropriate and reasonable. While section 39-71-605, MCA (1993) refers to an IME by a "physician," other provisions of the Workers' Compensation Act make clear that "physician" is used in a broad sense. Given this context, and practice in the workers' compensation field for IME panels to include Ph.D. psychologists, the requested IME is proper.

Physicians: Psychologists. Where claimant alleges disability due to a mental condition arising from a physical injury, an independent medical examination concerning his mental condition is appropriate and reasonable. While section 39-71-605, MCA (1993) refers to an IME by a "physician," other provisions of the Workers' Compensation Act make clear that "physician" is used in a broad sense. Given this context, and practice in the workers' compensation field for IME panels to include Ph.D. psychologists, the requested IME is proper.

Physicians: Psychological Evaluation. Where claimant alleges disability due to a mental condition arising from a physical injury, an independent medical examination concerning his mental condition is appropriate and reasonable. While section 39-71-605, MCA (1993) refers to an IME by a "physician," other provisions of the Workers' Compensation Act make clear that "physician" is used in a broad sense. Given this context, and practice in the workers' compensation field for IME panels to include Ph.D. psychologists, the requested IME is proper.

The matter before the Court is the respondent/claimant's objections to an independent medical examination (IME) by Richard Rogers, Ph.D. Dr. Rogers is a psychologist.

The parties agree that timeliness and scheduling of the IME are not at issue. stipulation (June 2, 1995). Rather, claimant objects to the IME on the grounds that (1) the rules of the Workers' Compensation Court contain no provision for an IME; (2) Dr. Rogers was not previously listed as a witness; (3) an IME must be performed by a medical doctor; and (4) any IME would be invalid due to the effect of anti-psychotic medications claimant is taking.

The last ground will be addressed first. Claimant has presented no affidavits or testimony supporting his contention that anti-psychotic drugs will prevent a valid examination. His contention is therefore unsupported. He may take up his contention when examining expert witnesses at trial or by deposition.

As to claimant's argument that the Court cannot order an IME because it does not have a rule corresponding to Rule 35, Mont.R.Civ.P., this Court on prior occasions has pointed out that the insurer has a statutory right to an IME at any time. *Richard Ahl v. Transportation Insurance Co.* (order granting insurer's motion compelling claimant to attend medical examination, WCC No. 9109-6250 (May 20, 1992)), and see *Hedger v. Montana Schools Group Authority*, (order for independent psychological evaluation, WCC No. 9209-6584 (September 16, 1994)). The statute in question is section 39-71-605, MCA.

The matter of listing Dr. Rogers as a witness is covered in the Court's last scheduling order, which gave the parties until June 2, 1995, in which to complete a final exchange of witnesses and exhibits. order resetting scheduling order (May 3, 1995). Claimant was notified that the insurer intends to use Dr. Rogers on May 24, 1995. stipulation ¶ 1 (June 2, 1995).

Finally, while section 39-71-605, MCA, refers to an independent medical examination by a "physician," other provisions of the Workers' Compensation Act make it clear that "physician" is used in a broad sense and does not refer only to medical doctors. "Treating physician" is defined to encompass not only M.D. physicians but also chiropractors, physician assistants, and dentists. § 39-71-116 (30), MCA. In the Court's experience, medical panels appointed pursuant to section 39-71-605, MCA, often include a Ph.D. psychologist. I conclude that the legislature intended the word "physician" to refer generally to persons with special expertise in the treatment of physical and psychological conditions, including Ph.D. clinical psychologists.

In his reply brief the claimant points out that Dr. Rogers' curriculum vitae does not indicate he is licensed as a clinical psychologist. That is so. However, the document, which is attached to the insurer's brief, lists Dr. Rogers as holding positions and memberships which are only compatible with a clinical licensure. Presently, he is the Director of Clinical Training at the University of North Texas. I find no merit to the contention.

In this case, the claimant's mental condition is at the center of the controversy. Claimant alleges that he is disabled on account of a mental condition arising as a result of a physical injury. The physical injury was in itself non-disabling. An IME concerning his mental condition is therefore appropriate and reasonable.

For the foregoing reasons, the claimant's objections to the IME by Dr. Rogers are overruled.

Dated in Helena, Montana, this 6th day of June, 1995.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Charles E. McNeil
Mr. Richard R. Buley