

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 79

WCC No. 9509-7391

RONALD HANSEN

Petitioner

vs.

NATIONAL UNION FIRE INSURANCE OF PITTSBURGH

Respondent/Insurer for

UNITED STAFFING, INCORPORATED

Employer.

ORDER DENYING RESPONDENT'S REQUEST FOR DISMISSAL

Summary: Insurer sought to dismiss petition for medical benefits where it has requested contested case hearing before Department of Labor and Industry regarding whether claimant should submit to an out-of-state independent medical examination.

Held: Motion to dismiss denied. Workers' Compensation Court may not have original, direct jurisdiction over the IME controversy, but the petition alleges a controversy involving medical benefits, over which the Court has jurisdiction.

Topics:

Jurisdiction: Subject Matter Jurisdiction. Although insurer requested contested case hearing before the DOL regarding claimant's refusal to attend an out-of-state independent medical examination, Workers' Compensation Court had jurisdiction over petition alleging controversy over medical benefits.

Independent Medical Examination (IME). Although insurer requested contested case hearing before the DOL regarding claimant's refusal to attend an out-of-state independent medical examination, Workers' Compensation Court had jurisdiction over petition alleging controversy over medical benefits.

Petitioner in this case seeks payment of medical expenses for further pre-surgical evaluations. According to the petition, his treating physician has recommended a back fusion subject to a general medical examination and a psychological evaluation. The respondent/insurer has denied payment for those further services pending petitioner's submission to an independent medical examination by a neurologist in Portland, Oregon. The petitioner has refused to submit to the examination and the Department of Labor and Industry has refused to order petitioner to submit to the examination. In light of those refusals, the respondent has requested a contested case hearing before the Department. In its response to the petition, it alleges that the petition is premature and that this Court lacks jurisdiction over the matter until such time as the Department issues a final decision. I will treat these allegations as a motion to dismiss.

The Court has jurisdiction. The petition alleges a controversy involving medical benefits and further alleges that the controversy has been mediated. While the Court may not have original, direct jurisdiction over the IME controversy, it does have jurisdiction to determine whether the insurer is liable for medical benefits. When requested, and where appropriate, the Court may order an IME during the course of litigation. *EBI/Orion Group v. Michael S. Blythe*, WCC No. 9407-7089, Order for Independent Medical Examination (June 6, 1995).

The respondent has not set forth any compelling reason why the Court should vacate this matter pending resolution of the IME dispute. It does not explain why it is necessary to send claimant out of state for an evaluation. Lacking any compelling reason to postpone consideration of the petition, I decline to do so. THEREFORE,

IT IS HEREBY ORDERED that the respondent's request that the petition be summarily denied until completion of Department proceedings is **denied**.

IT IS FURTHER ORDERED that the parties shall comply with the Scheduling Order issued September 13, 1995.

Dated in Helena, Montana, this 17th day of October, 1995.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Richard J. Martin
Mr. Donald R. Herndon