

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F004211

MARGARITA BARBOSA, EMPLOYEE	CLAIMANT
CURT BEAN LUMBER COMPANY, EMPLOYER	RESPONDENT
COMPENSATION MANAGERS, INC., INSURANCE CARRIER	RESPONDENT

ORDER FILED SEPTEMBER 3, 2003

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant represented by HONORABLE M. KEITH WREN, Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE WALTER A. MURRAY, Attorney at Law, Little Rock, Arkansas.

ORDER

This matter is currently before the Full Commission on the respondent's Motion to Remand. After considering the respondent's Motion, the claimant's response thereto, and all other matters properly before the Commission, we find that the respondent's Motion should be granted.

This appeal is somewhat unusual because it involves an appeal of an Administrative Law Judge's Prehearing Conference Order. On April 6, 2000, the claimant sustained admittedly compensable injuries during a motor vehicle accident. These injuries included one to her shoulder, on which Dr. J. Tod Ghormley performed reasonably

necessary surgery. The claimant requested a hearing on her entitlement to return to Dr. Ghormley for continuing difficulties with her shoulder. The respondent countended that the claimant's current problems are the result of a pre-existing condition. In the Prehearing Conference Order, the Administrative Law Judge stated the following:

3. In order to assist the parties and the Commission in resolving the current dispute concerning the claimant's possible need for additional medical care as a result of her compensable injury rather than her previous condition, Dr. Ghormley is authorized, at the expense of the respondents, to review medical records provided by the parties concerning the claimant's compensable injury and her previous shoulder problems, examine the claimant, and conduct such studies, if any, as may be reasonably necessary to evaluate her current status and to render an opinion as to whether any additional medical treatment is reasonably necessary as a result of her compensable shoulder injury of April 6, 2000, as distinguished from any shoulder problems existing prior to that injury.

The respondent has filed a timely appeal with the Commission arguing that (1) the Administrative Law Judge did not have authority to issue the "broad directives" contained in Finding No. 3 quoted above, (2) the Administrative Law Judge "is abdicating his role as fact finder by authorizing Dr. Ghormley to 'render an opinion as to whether any additional treatment is reasonably necessary'," and (3) the

order exposes respondent to potentially "great and needless expense" because "Dr. Ghormley is not authorized just to examine the Claimant or to review his medical records and offer an opinion, both of which are unwarranted, but also to 'conduct such studies, if any, as may be reasonably necessary to evaluate her current status'."

The claimant argues that (1) respondent's appeal should be dismissed because the Order is interlocutory and (2) the Administrative Law Judge did have authority to issue such an order pursuant to Ark. Code Ann. § 11-9-811(Repl. 2002), which provides the following:

Upon its own initiative at any time where compensation payments are being made without an award, the Workers' Compensation Commission may and in any case where the right to compensation has been controverted or where payments of compensation have been suspended, or where an employer seeks to suspend payments made under an award, or on application of an interested party, the commission shall make such investigation, cause such medical examination to be made, hold such hearings, and take such further action as the commission deems proper for the protection of the rights of all parties.

The Commission finds that the Order from which the respondent appealed is not a final appealable order and, therefore, dismisses the respondent's appeal and remands to the Administrative Law Judge for further proceedings. In the case of Spears v. George's, Full Commission Opinion

Filed November 17, 1997 (Claim No. E417491), the Commission stated:

As a general rule, workers' compensation orders are ordinarily reviewable only at the point where they award or deny compensation. Tec v. Falkner, 38 Ark. App. 13, 827 S.W.2d 661 (1992). Consequently, a party may apply for review of an administrative law judge's decision as a matter of right only at the point when the decision effectively grants or denies compensation. An interlocutory order is provisional or preliminary and does not finally determine any portion of the litigation. Unlike a final order, an interlocutory order is subject to change during the pendency of an action to meet the exigencies of a case.

However, the Full Commission is an administrative body statutorily vested with full power and authority to adjudicate disputes. Because the Commission can delegate that power to administrative law judges, it is authorized to review any administrative law judge's action to assure that he has properly administered his delegated authority. Ark. Code Ann. §11-9-207(a)(1) (Repl. 1996). See also, Ark. Code Ann. §11-9-204(b)(2).

. . .

In Humphrey v. Faulkner Nursing Center, 61 Ark. App. 48, 964 S.W.2d 224 (1998), the Court found that "[f]or an order to be final, the order must dismiss the parties from the court, discharge them from the action or conclude their rights as to the cause of action."

In Virginia (Snyder) Adams v. Southern Steel and Wire, Full Commission Opinion filed March 5, 1992 (D701120), the Commission found that an Administrative Law Judge's order making the respondents pay for an independent psychological evaluation was not a final, appealable order and directed the Clerk to receive briefs on the merits of the issue. However, in Brian Owens v. AB Tri State Termite & Pest Control, Full Commission Opinion filed July 27, 2000 (F000098), the Commission found that an order assessing deposition costs against the respondent was not a final, appealable order and dismissed the respondent's appeal.

In TEC v. Falkner, 38 Ark. App. 13, 827 S.W.2d 661 (1992), the Arkansas Court of Appeals found that a Commission order requiring the respondent to pay for an independent medical evaluation following the claimant's petition for a change of physician was not a final, appealable order. Further, the Court found that "the commission's directions that appellant pay Dr. Hixson a fee for the evaluation and pay appellee an attorney's fee for the change of physicians yet to be determined were merely incidental thereto."

We find that this matter is interlocutory and is not a final appealable matter that can be presented to the Commission. We hereby remand this case to the

Administrative Law Judge for further proceedings.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

JOE E. YATES, Commissioner

Commissioner Turner concurs.

CONCURRING OPINION

_____I concur with the Commission's finding that the Order is not a final, appealable order. I would point out, however, that the Administrative Law Judge found that respondent would be liable only for those expenses for medical services which are reasonably necessary. Thus, respondent's argument that it could potentially face "great liability" for "great and needless expense" is without merit.

Additionally, respondents' argument that the Administrative Law Judge did not have authority to enter such an Order is also without merit. As pointed out by claimant, Ark. Code Ann. § 11-9-811 specifically authorizes such an Order. Further, I note that additional authority can be found in Ark. Code Ann. §§ 207(a)(2); 508(b); and 511(a).

Accordingly, the Administrative Law Judge certainly did not abuse his discretion in ordering an evaluation of claimant's current physical condition at respondents' expense.

SHELBY W. TURNER, Commissioner