

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

JAHNAVA D. ERICKSON,)	
)	
Employee,)	
Claimant,)	
)	INTERLOCUTORY
v.)	DECISION AND ORDER
)	
PROVIDENCE HEALTH SYSTEM,)	AWCB Case No. 201402421
)	
Employer,)	AWCB Decision No. 15-0134
and)	
)	Filed with AWCB Anchorage, Alaska
PROVIDENCE HEALTH & SERVICES,)	on October 13, 2015
)	
Insurer,)	
Defendants.)	
_____)	

Jahnava Erickson's (Employee) and Providence Health System's (Employer) joint request for an order determining second independent medical evaluation (SIME) disputes was heard on October 7, 2015, in Anchorage, Alaska, a date selected on September 2, 2015. Attorney Robert Rehbock appeared by telephone and represented Employee. Attorney Jeffrey Holloway appeared by telephone and represented Employer. There were no witnesses. At hearing the parties announced they had resolved the issue set for hearing and had agreed to the medical disputes for the SIME physicians to address, agreed to the two physicians' specialties to perform the SIME and agreed the hearing could be cancelled. An oral order approved the stipulation and cancelled the hearing. This decision examines the oral order and memorializes the parties' stipulations. The record closed at the hearing's conclusion on October 7, 2015.

ISSUE

Though the parties stipulated to an SIME, they disagreed about the applicable medical disputes to be addressed. Employee contended there were four medical disputes and sought an order declaring the disputes.

Employer disagreed with Employee's assessment. It too wanted an order declaring the appropriate medical disputes to be addressed by the SIME.

At hearing, the parties announced they had resolved their disagreement over the disputes for the SIME. The parties set forth the agreed-upon medical disputes and jointly requested a hearing continuance or cancellation. An oral order approved the stipulation and cancelled the hearing.

Were the oral orders approving the parties' hearing stipulation and cancelling the hearing correct?

FINDINGS OF FACT

The following facts and factual conclusions are established by a preponderance of the evidence:

- 1) On August 7, 2015, Employer filed a petition requesting an SIME. On the same date, Employer also filed an SIME form, setting forth three SIME medical disputes, and requesting an orthopedic surgeon to perform the SIME. Only Employer's attorney signed the SIME form. (Petition; SIME form, August 7, 2015).
- 2) On August 18, 2015, Employee filed an answer including an opposition to Employer's SIME petition. Employee disagreed with Employer's stated medical disputes and objected in general to an SIME, stating his case was ready to go to hearing on its merits. (Opposition to Petition for SIME Dated 08/07/2015, August 14, 2015).
- 3) On September 25, 2015, Employee filed his own SIME form, setting forth four SIME medical disputes and requesting an SIME panel consisting of an orthopedic surgeon and a physical medicine and rehabilitation specialist. Only Employee's attorney signed this form. (SIME form, September 23, 2015).
- 4) On September 2, 2015, the parties through their attorneys attended a prehearing conference. The parties discussed the medical disputes for the SIME to address, and the specialists but could

not resolve their conflicts. Thus, though the parties stipulated to an SIME, they scheduled a procedural hearing for October 7, 2015, so the board could resolve the conflict between the parties and determine the appropriate medical disputes to be addressed by the SIME. (Prehearing Conference Summary, September 2, 2015).

5) At hearing on October 7, 2015, the parties through counsel stated they had stipulated to an SIME and to the medical disputes to be addressed and had stipulated to an SIME panel, all on a new SIME form reportedly e-filed in Juneau, Alaska, on October 6, 2015. The parties stipulated to an orthopedic surgeon and a physical medicine and rehabilitation physician panel to perform the SIME. They also agreed to the following medical disputes to be addressed by the SIME panel: medical stability; functional capacity; the amount and efficacy of the continuance of or necessity of treatment; and compensability. An oral order approved the stipulation. The parties jointly moved for a hearing cancellation, and an oral order cancelled the hearing. (Record).

PRINCIPLES OF LAW

8 AAC 45.050. Pleadings. . . .

. . . .

(f) Stipulations.

. . . .

(2) Stipulations between the parties may be made at any time in writing before the close of the record, or may be made orally in the course of a hearing or a prehearing.

(3) Stipulations of fact or to procedures are binding upon the parties to the stipulation and have the effect of an order unless the board, for good cause, relieves a party from the terms of the stipulation. A stipulation waiving an employee's right to benefits under the Act is not binding unless the stipulation is submitted in the form of an agreed settlement, conforms to AS 23.30.012 and 8 AAC 45.160, and is approved by the board.

8 AAC 45.074. Continuances and cancellations. (a) A party may request the continuance or cancellation of a hearing by filing a

. . . .

(2) stipulation signed by all the parties requesting a continuance or cancellation together with evidence of good cause for the request.

(b) Continuances or cancellations are not favored by the board and will not be routinely granted. A hearing may be continued or cancelled only for good cause and in accordance with this section. For purposes of this subsection,

(1) good cause exists only when

....

(J) the parties agree that the issue set for hearing has been resolved without settlement and the parties file a stipulation agreeing to dismissal of the claim or petition under 8 AAC 45.050(f)(1). . . .

(2) the board or the board's designee may grant a continuance or cancellation under this section

(A) for good cause under (1)(A) - (J) of this subsection without the parties appearing at a hearing;

(B) for good cause under (1)(K)-(N) of this subsection only after the parties appear at the scheduled hearing, make the request and, if required by the board, provide evidence or information to support the request; or

(C) without the parties appearing at the scheduled hearing, if the parties stipulate to the continuance or cancellation for good cause as set out in (1)(A)-(J) of this subsection. . . .

8 AAC 45.130. Findings and awards and orders. The board will prepare and serve the findings and award as well as all other orders in these proceedings.

ANALYSIS

Were the oral orders approving the parties' hearing stipulation and canceling the hearing correct?

Employer requested an SIME. Employee initially opposed the SIME but subsequently filed his own SIME form. The parties could not agree on the specialists to perform the SIME and they could not agree on the medical disputes to be addressed. On September 2, 2015, the parties through their attorneys stipulated to an SIME and also agreed to a procedural hearing on October 7, 2015, to obtain an order deciding these SIME issues. 8 AAC 45.050(f)(2).

At hearing on October 7, 2015, the parties through their attorneys appeared and stated they had resolved the issues concerning the SIME. The parties stipulated to an SIME panel including an

orthopedic surgeon and a physical medicine and rehabilitation expert. The parties also stipulated to the SIME panel addressing the following medical disputes: medical stability; functional capacity; the amount and efficacy of the continuance of or necessity of treatment; and compensability. 8 AAC 45.050(f)(2). An oral order approved the parties' stipulation. The parties then jointly requested a hearing cancellation, which an oral order also granted.

The parties will be held to their binding stipulation, unless a party is relieved from the stipulation for good cause. 8 AAC 45.050(f)(3). While it appears the parties had resolved the issue set for hearing prior to hearing, neither party filed a stipulation agreeing to cancel the hearing. Consequently, they had to appear at the hearing to state their stipulation and request a hearing cancellation. 8 AAC 45.074(a)(2), (b)(2)(B). As the issue set for hearing had been resolved without settlement, it was appropriate to cancel the hearing and the order so doing was therefore correct. 8 AAC 45.074(a)(J); 8 AAC 45.130.

CONCLUSION OF LAW

The oral orders approving the parties' hearing stipulation, and canceling the hearing were correct.

ORDER

- 1) The parties will proceed to an SIME as they previously stipulated on September 2, 2015, and in conformance with their October 7, 2015 stipulation.
- 2) The SIME shall be performed by an orthopedic surgeon and physical medicine and rehabilitation specialist panel selected from the approved SIME list.
- 3) The SIME panel shall address the following medical disputes: medical stability; functional capacity; the amount and efficacy of the continuance of or necessity of treatment; and compensability.
- 4) The parties are directed to attend a prehearing conference if they need further assistance in arranging for or completing the SIME process.

Dated in Anchorage, Alaska on October 13, 2015.

ALASKA WORKERS' COMPENSATION BOARD

William Soule, Designated Chair

Michael O'Connor, Member

Pamela Cline, Member

PETITION FOR REVIEW

A party may seek review of an interlocutory other non-final Board decision and order by filing a petition for review with the Alaska Workers' Compensation Appeals Commission. Unless a petition for reconsideration of a Board decision or order is timely filed with the board under AS 44.62.540, a petition for review must be filed with the commission within 15 days after service of the board's decision and order. If a petition for reconsideration is timely filed with the board, a petition for review must be filed within 15 days after the board serves the reconsideration decision, or within 15 days from date the petition for reconsideration is considered denied absent Board action, whichever is earlier.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accordance with 8 AAC 45.050. The petition requesting reconsideration must be filed with the board within 15 days after delivery or mailing of this decision.

MODIFICATION

Within one year after the rejection of a claim, or within one year after the last payment of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, a party may ask the board to modify this decision under AS 23.30.130 by filing a petition in accordance with 8 AAC 45.150 and 8 AAC 45.050.

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Interlocutory Decision and Order in the matter of Jahnava D. Erickson, employee / claimant v. Providence Health System, employer / insurer / defendants; Case No. 201402421; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by First-Class U.S. Mail, postage prepaid, on October 13, 2015.

Pamela Murray, Office Assistant