

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Timothy Wilson,

Petitioner,

vs.

NO: 02 WC 18002

Seigle's Home and Building,

Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

Pursuant to Section 19(f) of the Act, the Commission finds that a clerical error exists in its Order dated March 8, 2018, in the above captioned.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Order dated March 8, 2018, is hereby vacated and recalled pursuant to Section 19(f) for clerical error contained therein.

IT IS FURTHER ORDERED BY THE COMMISSION that a Corrected Order shall be issued simultaneously with this Order.

DATED: **MAR 16 2018**
TJT:yl
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Thomas J. Tyrnell

In a “Corrected Decision and Opinion on Section 8(a) Petition and Petition for Additional Compensation and Attorneys’ Fees” dated 7/17/08, the Commission found that “... Respondent is liable for the costs of medical treatment recommended by Dr. Caron, including the second cervical/thoracic surgical procedure, the weight loss and diabetes treatment necessary to proceed with surgery, and the treatment of the pilinoidal [sic] cyst also necessary to proceed with surgery. Respondent bears the responsibility to authorize and pay medical expenses for the preliminary treatment of Petitioner’s diabetes and pilondial [sic] cyst regardless of whether those conditions are related to the accident of January 17, 2002, because the treatment of these conditions is reasonably necessary to cure Petitioner of the effects of the accidental injury.” In addition, the Commission found that penalties were not appropriate in this case, and denied Petitioner’s request for same.

The Commission’s decision was subsequently affirmed by the Circuit Court of Kane County in an order dated 12/2/09.

On 8/19/11, Petitioner’s counsel at the time, Patrick A. Tallon of Fitz & Tallon, LLC, filed a motion requesting relief pursuant to §§8(a), 19(k), 19(l) and 16 of the Act. This motion was subsequently dismissed by Commissioner Tyrrell on 9/20/11.

Respondent subsequently filed “Motion[s] to Suspend Benefits under Section 19(d)” on 4/25/13 and 9/3/14. The Commission’s file does not show what happened with respect to these motions other than the fact that it was continued at one point to 11/13/14, and that the Commissioner granted a motion by Respondent for Dedimus on 8/14/15.

On 7/25/16, Respondent filed another “Motion to Suspend Benefits under Section 19(d).” Commissioner Tyrrell subsequently dismissed this motion on 9/26/16.

On 10/27/16, Respondent filed a “Motion to Suspend Benefits under Section 19(d) or 19(b).” Commissioner Tyrrell dismissed this motion on 1/25/17.

Respondent filed a “Motion to Suspend Benefits Under Section 19(d)” on 2/9/17 and a “Motion to Suspend Benefits under Section 19(d) or 19(b)” on 10/10/17 alleging that it had complied with the Commission’s previous order by providing Petitioner with treatment for his pilonidal cyst as well as his diabetes control and weight loss medications, but that Petitioner had not lost sufficient weight and has not properly adhered to reasonable protocols to control his diabetes. As a result, Respondent argued that the awarded neck surgery would be too risky for Petitioner to undergo, and thus not reasonable under the circumstances, and that the Commission should therefore modify its prior order and find that Petitioner has failed to establish the current necessity for any further medical or surgical treatment, including the previously awarded cervical surgery as well as further benefits for weight loss and diabetes-control medication for the reason that Petitioner’s conduct was unsafe and injuries pursuant to §19(d) of the Act.

The matter was initially set for hearing before Commissioner Tyrrell on 10/26/17 at which time Petitioner’s attorney, Nicholas Fitz of the Fitz Law Group, failed to appear. The Commissioner thereupon continued the motion to 11/15/17 in Chicago, Illinois.

Respondent filed a similar motion on 11/13/17 designating a hearing date of 11/15/17. (RX5).

In a letter dated 11/7/17, Commissioner Tyrrell admonished Petitioner's counsel for failing to appear at the last hearing date without explanation, reminding counsel that Respondent was seeking to modify or suspend benefits to his client, and informing him that the motion had been continued to 11/15/17. (RX7).

Petitioner's counsel subsequently failed to appear at the hearing held before Commissioner Tyrrell on 11/15/17. At that time counsel for Respondent represented that Petitioner subsequently underwent treatment for the pilonidal cyst in question, but that he has failed to consistently lose weight and control his diabetes. Furthermore, Respondent noted that at its request Dr. David Fletcher had conducted several follow-up examinations and had determined that Petitioner was at risk of a cardiovascular event if he proceeds with the surgery proposed by Dr. Caron. As a result, Respondent argues that Petitioner's conduct represents an unsafe and injurious practice under §19(d) of the Act, and that the Commission should therefore deny the previously ordered cervical surgery, given that said treatment is no longer reasonable and necessary.

The Commission notes that worker's compensation is a statutory remedy and the Workers' Compensation Commission, as an administrative agency, is without general or common law powers. Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Commission, 236 Ill.2d 132, 145, 923 N.E.2d 266, 337 Ill.Dec. 707 (2010); See Flynn v. Industrial Commission, 211 Ill.2d 546, 553, 813 N.E.2d 119, 286 Ill.Dec. 62, (2004); Cassens Transport Co. v. Industrial Commission, 218 Ill.2d 519, 525, 844 N.E.2d 414, 300 Ill.Dec. 416 (2006).

With that in mind, §19(b) provides that “[p]rovided the employer continues to pay compensation pursuant to paragraph (b) of Section 8, the employer may at any time petition for an expedited hearing on the issue of whether or not the employee is entitled to receive medical, surgical, or hospital services or other services or compensation as provided in paragraph (a) of Section 8, or compensation as provided in paragraph (b) of Section 8. When an employer has petitioned for an expedited hearing, the employer shall continue to pay compensation as provided in paragraph (b) of Section 8 unless the arbitrator renders a decision that the employee is not entitled to the benefits that are the subject of the expedited hearing or unless the employee's treating physician has released the employee to return to work at his or her regular job with the employer or the employee actually returns to work at any other job.”

Furthermore, §19(d) provides “[i]f any employee shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery or shall refuse to submit to such medical, surgical, or hospital treatment as is reasonably essential to promote his recovery, the Commission may, in its discretion, reduce or suspend the compensation of any such injured employee.”

In the present case, the record shows that Petitioner underwent a pilonidal cystectomy and has since been cleared by Dr. Payton for surgery. (RX7). The evidence

submitted by Respondent also contains a report by Dr. Greg Crovetti dated 10/25/16 which recorded that at the time of his 1/26/15 visit "... the claimant has not been taking care of own self and is now trying to get back on track. The claimant has been dealing with cancer treatments for the significant other. The claimant's blood sugars have been out of control due to a dental infection. The claimant has not been taking all of the medications regularly but plans to get back on track now. (RX4, p.4). However, by the time of his last recorded visit on 8/24/16, Dr. Crovetti noted that "... the claimant has done a great job in getting the sugars under better control. The claimant has lost 21 pounds since January... The claimant has marked improvement in the sugars since the teeth were pulled. The significant other is doing better with cancer. They are trying to eat healthier and [eat] smaller portions... The claimant still has some swelling in the neck and back... and some numbness and tingling in the arms and feet related to back problems. The claimant has done an excellent job in trying to get the sugars under control. Complicating variables including stress associated with family illness and infections of the teeth have been relieved. The claimant is trying to watch the diet and do some exercises. The A1c has dropped from 11.9 to 8.3 which is a significant improvement. A goal into the 7's is set and the claimant is motivated to try to achieve this. The claimant has not been on Metformin due to misunderstanding." (RX4, pp.4-5).

In a utilization review report dated 2/7/14, Dr. Jonathan Citow recorded that "... the provider recommends C7-T1 right foraminotomy with possible decompression on the left. This claimant who sustained injury on 01/24/02 and has had a prior ACDF at C5-7 in 2005 with post-operative treatment. Submitted report indicates that the claimant has ongoing numbness and discomfort in the upper extremities which is progressing. There is also notation of urinary urgency and incontinence which is increasing. However, there is not any evidence of updated diagnostic imaging that confirms any spinal stenosis or support possible nerve root compression. Complaints of numbness and pain are general in nature. Without updated imaging confirming stenosis supporting potential myelopathy and suggesting nerve root compression supporting the need for decompression, the medical necessity for the request C7-T1 right foraminotomy with possible decompression on the left is not established. Recommend non-certification." (RX8).

Finally, Respondent's §12 examining physician, occupational medicine specialist Dr. David Fletcher, testified that following his examination of Petitioner on 1/18/13 and review of the medical records, he was of the opinion that Petitioner's "... diabetic control is way out of whack and it really presents a risk during a surgical procedure, that he's going to have complications, especially wound infections, and it raises a great deal of exposure to any surgeon who would operate on a patient like this that has demonstrated poor control." (RX1, p.13). Dr. Fletcher noted that "... that's why if I was asked to medically clear him if I was a treating physician I would raise the concerns that I have expressed in my two reports because of all these comorbidities and lack of proper medical management for a disease process that threatens his life." (RX1, p.15). He went on to state that "... it's basically his lack of proper medical follow-up and having chronic disease management of his diabetes and his obesity and his dental infections that's led to poor control that raises significant risk of complications; infection, pulmonary embolism, DVT during a surgical procedure." (RX1, p.17).

In addition, Dr. Fletcher stated that “I personally don’t think that surgery is going – if he underwent it, it would significantly alter his situation. Essentially because of his lack of proper medical management and self-responsibility to manage his diabetes and his weight, puts him at risk to have a surgery to help his chronic pain complaints.” (RX1, p.18). He also noted that it “... would really be important if he did get medically cleared where it would be appropriate to consider a surgery again, then he should have some updated imaging of his spine.” (RX1, p.19). Dr. Fletcher also noted that Petitioner’s smoking habit would be another comorbidity “... that would make him have less than an ideal response to surgical intervention. Cigarette smoking causes acceleration of degenerative disc disease, it also leads to the potential to have a nonunion of spinal fusion. And so it would be certainly another reason why one would be extremely concerned in recommending [an] additional surgical procedure with that lifestyle habit.” (RX1, p.20).

Based on the above, and the record taken as a whole, the Commission declines to find Petitioner has engaged in insanitary or injurious practices tending to imperil or retard his recovery pursuant to §19(d) of the Act. However, based on the opinion of Dr. Fletcher and the utilization review of Dr. Citow, the Commission finds that the cervical/thoracic procedure previously prescribed by Dr. Caron, and awarded by the Commission, is no longer reasonable and necessary under the circumstances. More to the point, Petitioner’s inability to lose sufficient weight and other co-morbidities, for which he has had ten (10) years to address, argue strongly against proceeding with the proposed surgery given the higher probability of failure and the increased risk of serious complications. Furthermore, since the weight loss and diabetes treatment/medication previously awarded by Commission was predicated on the surgical procedure in question, the Commission finds that said treatment and medication is likewise no longer reasonable and necessary.

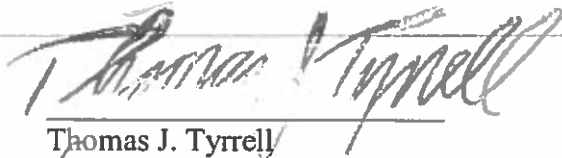
Once again, Petitioner failed to refute the evidence presented by Respondent as part of its motion given his counsel’s failure to appear at the hearing on review, despite more than adequate notice.

Accordingly, the Commission hereby grants the Respondent’s motion to suspend benefits and modifies the Commission’s prior decision to find that Petitioner failed to prove that the aforementioned surgery and related treatment/medication is currently reasonable and/or necessary to cure or relieve his condition of ill-being relative to the work-related injury suffered on 1/17/02. As a result, Petitioner’s claim for ongoing treatment in the form of the cervical/thoracic surgery prescribed by Dr. Caron as well as the award for ongoing weight loss and diabetic treatment is hereby vacated, and Petitioner’s claim for same is hereby denied.

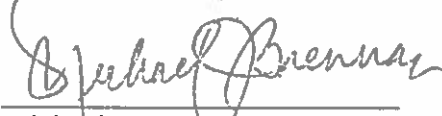
IT IS THEREFORE ORDERED BY THE COMMISSION that the previous "Corrected Decision and Opinion on Section 8(a) Petition and Petition for Additional Compensation and Attorneys' Fees" dated 7/17/08 is hereby modified as stated above.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: **MAR 16 2018**
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Thomas J. Tyrrell



Michael J. Brennan



Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
AGREED ORDER

Todd Colesby,
Employee/Petitioner

Case No.: 14 WC 018289

v.

Fed Ex Freight,
Employer/Respondent

AGREED ORDER

This matter appears before the Commission on Petitioner's Motion. The Commission being fully advised in the premises.

It is hereby ordered that:

1. Any and all Orders entered by the Commission on 07/10/2017 are hereby vacated;
2. Any and all Orders entered by the Commission on 06/08/2017 are hereby vacated.

ENTERED:

MAR 6 - 2018

APPROVED BY AUTHORITY OF THE
ILLINOIS WORKERS' COMPENSATION COMMISSION
pursuant to the provisions of the
Workers' Compensation and Workers'
Occupational Diseases Acts

MAR 01 2018


By: Charles J. Devjendt, Commissioner

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input type="checkbox"/>	PTD/Fatal denied
<input checked="" type="checkbox"/>	None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RANDY BACHMANN,
Petitioner,


vs.

No: 09 WC 3354

HOLLAND CONSTRUCTION SERVICES,
Respondents.

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305 / 14

MAR 13 2018


Brendan O'Rourke, Assistant Secretary
Illinois Workers' Compensation Commission



ORDER

This matter comes before the Commission on the Petition to Fix Attorney Fees and Costs pursuant to Section 16 of the Workers' Compensation Act filed by attorney Bill T. Walker on behalf of The Alleman Law Firm, P.C., and the estate of John Alleman, deceased, and the subsequent Motion to Dismiss filed by Petitioner and Petitioner's current firm Womick Law Firm.

The record currently before the Commission is mostly the written pleading of the lawyers. The record indicates that Petitioner, Randy Bachmann, retained the Alleman Law Firm, P.C. for a workers' compensation claim for an alleged accident on May 15, 2007. On June 13, 2013, Petitioner was declared a disabled adult based on the condition caused by the alleged accident, and on June 17, 2013, Ron Kiser was appointed guardian of the person and estate of Randy Bachmann.

On July 1, 2015, the Circuit Court of Perry County approved an order allowing the guardian to approve a settlement in which \$110,000.00 would be awarded as attorney fees and \$8,471.53 in attorney costs. On June 10, 2016, Mr. Alleman died from injuries suffered in an airplane accident. Apparently, after Mr. Alleman's death, Attorney Walker came into possession of some, if not all of his files. On June 28, 2016, Mr. Walker sent out a form letter to Mr. Bachmann noting Mr. Alleman's death and offering Mr. Bachmann the choice of retaining his firm or to have his file sent to another law firm. On August 31, 2016, Mr. Walker filed a "Motion for Direction" in the Circuit Court of Perry County to determine what he should do with the file in the instant claim. There is no indication that any action was taken on that motion or that there was any response to Mr. Walker's correspondence to Mr. Bachmann. On September 6, 2016, Guardian Kiser moved the Commission to have The Womick Law Firm appointed as attorney for Mr. Bachmann. That motion was approved. Thereafter, on September 7, 2016, the Commission approved a settlement contract for \$550,000, of which \$73,048.24 was deducted for attorney fees, \$9,477.53 went to expenses and Guardian *Ad Litem* fees, and \$34,685.56 was used to pay off a medical lien.

In its pleading, The Womick Law Firm alleged that Mr. Walker received actual notice of entry of the settlement contract on September 9, 2016. On October 13, 2016, Mr. Walker filed a Petition for Review of the substitution of attorneys preserving the issues of "removal of attorney" and attorney fees. In this pleading, Mr. Walker alleged he had "not received" the substitution of attorney order entered by the Commission on September 6, 2016.

The Act provides that a party must file a Petition for Review of a Commission decision within 30 days of receipt of such decision. 820 ILCS 305/19(b). A settlement contract is treated the same as a decision and a settlement contract becomes a final decision of the Commission if no review is timely sought. Thereafter, the Commission loses jurisdiction and a party's only recourse is to appeal to the Circuit Court. Therefore, based on the assertion of The Womick Law Firm that Mr. Walker received the order on September 9, 2016, his motion is time-barred.

However, even if the motion were not barred as being untimely, the Commission does not see how Mr. Walker has standing to assert an interest in any fees allegedly due to The Alleman Law Firm, P.C. In his pleading before the Commission, Mr. Walker asserts that he "has acted as an attorney for the Alleman Estate to protect the firm's interest in recovering fees and costs for the work performed in litigating the Bachmann workers' compensation case." However, nowhere does Mr. Walker explain the basis upon which he asserts standing to "protect" the interests of the Alleman Law Firm or the Alleman Estate. There is no indication that Mr. Walker was ever a partner with Mr. Alleman, that he was ever a member of, or had any financial interest in, The Alleman Law Firm, P.C., that he was appointed administrator/executor of the estate, or that he was retained to represent the estate by the administrator/executor. The only basis upon which Mr. Walker seems to have an interest in this matter is that he apparently came into possession of Mr. Alleman's file. Therefore, the Commission concludes that Mr. Walker has no standing to assert the instant claim and he is precluded from recovery whether or not the matter is barred by the passage of time.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Petition of the firm Bill T. Walker on behalf of The Alleman Law Firm, P.C., and the estate of John Alleman to Fix Attorney Fees and Costs Pursuant to Section 16 of the Workers' Compensation Act, hereby denied.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: SEP 29 2017

Deborah L. Simpson
Deborah L. Simpson
David L. Gore

David L. Gore
Stephen J. Mathis
Stephen J. Mathis

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CERTIFIED as a true and correct copy pursuant to 820 ILCS 305/19

MAR 13 2018

Brandon O'Rourke
Brandon O'Rourke, Assistant Secretary
Illinois Workers' Compensation Commission



IT IS THEREFORE ORDERED BY THE COMMISSION that the "Motion to Recall Commission Decision Pursuant to Section 19(f) of the Act" is denied.

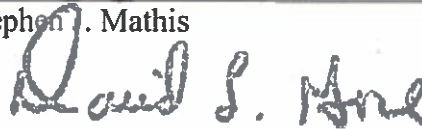
DATED: MAR 5 - 2018

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Stephen J. Mathis



David L. Gore



Deborah Simpson