

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JEENLEE NIELSEN,

Claimant,

vs.

MIDWEST MEDICAL TRANSPORT
COMPANY, L.L.C.,

Employer,

OLD REPUBLIC INSURANCE CO.,

Insurance Carrier.
Defendants.

File No. 22005624.04

A P P E A L

D E C I S I O N

Head Notes: 2906, 5-9999

Claimant Jeenlee Nielsen appeals from an order of dismissal without prejudice filed on May 2, 2023. Claimant filed an original notice and petition on April 11, 2023. The petition included an attached application for relief pursuant to Iowa Code section 85.27(2). In her application, claimant sought to compel defendants to produce a video of the motor vehicle accident which occurred on April 28, 2022, which caused claimant's alleged injuries. Defendants Midwest Medical Transport Company, L.L.C., employer, and its insurer, Old Republic Insurance Company, responded to the application with a motion to dismiss.

The deputy commissioner considered claimant's application for relief pursuant to Iowa Code section 85.27(2), as well as the motion to dismiss, and concluded Iowa Code section 85.27(2) is not directed at evidence such as a video obtained from within an ambulance. The deputy commissioner concluded the claimant's petition and application for relief failed to state a claim upon which relief can be granted prior to institution of an arbitration proceeding. Accordingly, the deputy commissioner entered an order of dismissal without prejudice on claimant's application for relief pursuant to Iowa Code section 85.27(2).

Claimant appeals from the deputy commissioner's dismissal of her petition and application for relief pursuant to Iowa Code section 85.27(2). Claimant asserts on appeal that the deputy commissioner erred in finding that Iowa Code section 85.27(2) does not require pre-litigation disclosure of the video she seeks of the motor vehicle accident which occurred on April 28, 2022. Claimant asserts this agency has jurisdiction under Iowa Code section 85.27(2) and should enter a pre-litigation order directing defendants to disclose the full video claimant seeks.

Defendants respond to the appeal and assert the deputy commissioner's analysis was accurate. Defendants assert they have no obligation to disclose the requested video prior to the institution of litigation or a contested case proceeding before this agency. Defendants assert that the order of dismissal without prejudice should be affirmed on appeal.

I performed a de novo review of the record and the detailed arguments of the parties. I reach the same analysis and conclusions as those reached by the deputy commissioner. I find the deputy commissioner provided a well-reasoned analysis of all the issues raised in the application for relief pursuant to Iowa Code section 85.27(2) and the corresponding motion to dismiss filed by defendants. I affirm the deputy commissioner's conclusions of law and order of dismissal without prejudice.

On appeal, claimant urges that the deputy commissioner erred in his asserted broad application of the holding in Iowa Insurance Institute v. Core Group of Iowa Association for Justice, 867 N.W.2d 58 (Iowa 2015). Claimant further argues that the plain language of Iowa Code section 85.27(2) is not limited to medical records and should be interpreted by this agency to require defendants to disclose the requested video. The deputy accurately noted the parties' contentions and weighed the parties' arguments in light of the Supreme Court's decision in Iowa Insurance Institute. The Iowa Supreme Court noted in Iowa Insurance Institute, that the legislature included the provisions in Iowa code section 85.27(2) within a statutory provision that deals with health care services. 867 N.W.2d at 72. The Court specifically considered whether section 85.27(2) is to be interpreted broadly to include all information or is limited to a narrower application involving evidence such as medical records. As the deputy commissioner noted, the Iowa Supreme Court engaged in statutory interpretation and concluded:

We are persuaded that [Iowa Code section 85.27(2)] is directed at health care provider records and not at any information that might have any bearing on an employee's physical or mental condition, including work product surveillance. Section 85.27(2) does not refer to attorneys, does not mention discovery barriers other than 'privileges' (which the work product immunity is not), and falls within a code provision that is otherwise limited to health care services.

Iowa Insurance Institute, 867 N.W.2d at 79.

Claimant argues this conclusion by the Iowa Supreme Court is merely dicta, but claimant offers no contrary authority that Iowa Code section 85.27(2) is directed at items such as the video she seeks in her application for relief. Given the statutory construction and specific language of the Iowa Supreme Court concluding that Iowa Code section 85.27(2) is directed at health care provider records and not other information, I find the deputy commissioner accurately and correctly interpreted that statutory provision.

Claimant further asserts a policy argument that this agency should participate in this pre-litigation discovery attempt and order the disclosure of the requested video because to do so would encourage the free flow of information in workers' compensation claims. Indeed, the Iowa Supreme Court has indicated that one purpose of Iowa Code section 85.27(2) is to provide "for the free flow of information regarding a worker's physical or mental condition relative to a compensation claim." Morrison v. Century Engineering, 434 N.W.2d 874, 876 (Iowa 1989). The purpose of the statute is to encourage easy access to information to encourage the speedy processing of workers' compensation claims. Id.

On the other hand, claimant is seeking this information prior to a formal institution of an arbitration proceeding before this agency. Once an arbitration proceeding is instituted, claimant has discovery rights via subpoena and via the ability to request production of documents, serve interrogatories, serve requests for admissions, and take depositions. None of those discovery rights have been granted parties prior to formal litigation. Claimant seeks to expand Iowa Code section 85.27(2) to require pre-litigation discovery by the parties as well as monitoring and enforcement of such discovery by this agency.

Claimant asserts this will result in less litigation because information will be exchanged before litigation and perhaps avoid the need for litigation. Ironically, claimant has elected to forego formal litigation of the underlying claim at this time and has instituted a procedure that seeks this agency's involvement in discovery measures prior to institution of formal litigation of the underlying claim. This has resulted in an additional contested case and an appeal, rather than elimination of litigation. See Banco Mortg. Co. v. Steil, 351 N.W.2d 784 (Iowa 1984) (noting that piecemeal litigation is disfavored because it can cause multiple appeals, significant delays, and increased litigation costs); Mason v. State of Iowa, Case No 5378, IA PERB (March 20, 1997) (1997 WL 34674882) ("Appellate courts have long favored uninterrupted proceedings at the trial court level, with a single and complete review, so as to avoid the delay, inconvenience and expense inherent in piecemeal adjudications. Considerations of efficiency and economy have equal applicability in the field of administrative law and procedure."); Thiede v. Elite Casino Resorts, L.L.C., File No. 5068126 (Appeal September 2021) (noting that piecemeal litigation is discouraged and may cause confusion and potentially conflicting results).

Claimant's attempt to involve this agency in pre-litigation discovery mechanisms and enforcement would result in piecemeal litigation. Claimant's proposed pre-litigation discovery and enforcement mechanisms could result in appeals (such as this one) and judicial reviews that could delay underlying claims, result in multiple appeals resulting from the same underlying claim, and cause unnecessarily complicated agency and judicial review records. Claimant has a satisfactory mechanism to pursue the discovery she seeks. Once litigation is formally instituted, she can pursue typical discovery measures for the requested video. See Iowa Rules of Civil Procedure 1.509-1.512.

Claimant elects to delay the filing of a petition before this agency on her underlying claim and is certainly entitled to exercise her chosen litigation strategy. However, she has not established a legal right to pursue pre-litigation discovery or a legal obligation of this agency to monitor and enforce pre-litigation discovery measures between parties. Claimant's proposed pre-litigation discovery is likely to result in additional administrative burdens on this agency, as well as unnecessarily complicating agency records, and likely causing additional and unnecessary appeals and judicial reviews over pre-litigation discovery issues.

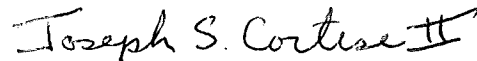
The deputy's commissioner's analysis and conclusion are well-founded in existing appellate case law and are accurate. I find the deputy commissioner was correct rejecting claimant's request and in ordering dismissal of the petition and application for failure to state a claim upon which relief can be granted at this time. Claimant can pursue the requested video via discovery measures if, and when, she elects to pursue formal litigation in her claim. I affirm the deputy commissioner's analysis and order of dismissal without prejudice.

ORDER

IT IS THEREFORE ORDERED that the deputy commissioner's order of dismissal without prejudice is affirmed in its entirety.

Claimant's original notice and petition, along with the corresponding application for relief pursuant to Iowa Code section 85.27(2) are dismissed without prejudice.

Signed and filed on this 11th day of September, 2023.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Jennifer Zupp (via WCES)

Madeline McGill (via WCES)