

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

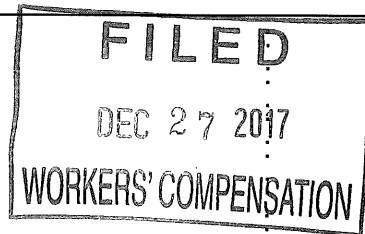
MINE ODOBASIC,

Claimant,

vs.

TYSON FRESH MEATS, INC.,

Employer,  
Self-Insured,  
Defendant.



File No. 5055284

RULING ON

MOTION FOR REHEARING

The defendant seeks rehearing. Defendant contends that the Arbitration decision improperly awarded independent medical evaluation (IME) expenses under Section 85.39. The argument is well-summarized in paragraph 18 of defendant's Motion for Rehearing: "... Claimant should not be entitled to a second examination at Defendant's expense by claiming she wasn't represented and therefore didn't know the purpose of such an examination when it was clearly conveyed to her and she was represented by counsel prior to the appointment taking place that she herself scheduled."

The defendant makes some good points. This was, in fact, a close issue and there were some facts that support their position. I did, however, consider all of these arguments in the original Arbitration decision, and I find no compelling basis to alter the Arbitration decision on Rehearing.

There are some gaps in the record before the agency and there are some facts which are not entirely clear. It is clear the claimant asked the defendant to see a physician on August 11, 2014. (Def. Ex. M, p. 1) The greater weight of evidence is that the claimant requested to see a physician for treatment purposes. She was unrepresented on August 11, 2014. Through her testimony, it is clear that she believed she was not better. She most definitely was not seeking a higher impairment rating. For some reason, the claimant's request for the second opinion is not in the record of evidence, although it appears the request was made in writing.

In response to this request, Tyson provided a letter to claimant on August 12, 2014. (Def. Ex. M, p. 1) The letter is in English. Claimant does not read English. She was not represented. The letter itself, even if it was fully translated to her primary language, did not fully explain that the claimant was using her IME rights under Section 85.39. As mentioned in the Arbitration decision, it is entirely unclear who chose Dr. Delbridge. On September 17, 2014, Tyson sent a letter to Dr. Delbridge announcing

that Ms. Odobasic had requested an IME. "At this time it is our understanding an Independent Medical Examination is being requested by Ms. Odobasic which is scheduled for November 20, 2014." (Def. Ex. M, p. 6) It does not appear this letter was copied to claimant or claimant's counsel. The letter asks a series of standard IME questions about diagnosis, impairment, and future treatment. (Def. Ex. M, p. 6)

Claimant's counsel sent a letter of representation formally announcing his representation of Ms. Odobasic on September 3, 2014. (Def. Ex. M, p. 4) It is unclear whether the defendant provided all of their communications to claimant or claimant's counsel prior to the visit. Claimant attended the appointment with Dr. Delbridge on November 24, 2014.

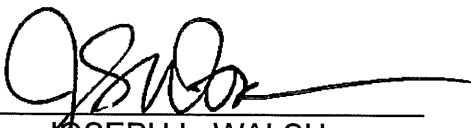
In response to the letter from Tyson, Dr. Delbridge prepared a report for Tyson on January 2, 2015. (Def. Ex. A, p. 1) It does not appear this letter was copied to claimant or her counsel. (Def. Ex. A, p. 4) By all outward appearances, Dr. Delbridge was providing the report for Tyson, not the claimant.

Claimant's counsel then sought an IME under Section 85.39, which he requested in writing on September 2, 2015. (Def. Ex. M, p. 3) It appears claimant's counsel did not believe that Tyson considered evaluation with Dr. Delbridge to be an 85.39 evaluation. There is no evidence in this record that Tyson objected to this evaluation.

Based upon these facts, it appears that Tyson misconstrued claimant's request for additional treatment or a second opinion for treatment purposes as a request for a true Section 85.39 IME.<sup>1</sup> Both parties then communicated and/or documented poorly the purpose of the Delbridge evaluation. Under this record, there is simply no way that I can find the Delbridge evaluation was a true Section 85.39 evaluation.

THEREFORE, defendant's Motion for Rehearing is DENIED.

Signed and filed this 27<sup>th</sup> day of December, 2017.

  
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JOSEPH L. WALSH  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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<sup>1</sup> There are other possible conclusions based upon this record. It is possible that claimant's counsel was advising her behind the scene to intentionally manipulate this situation to obtain two IMEs for the claimant. I do not find this likely. It is also possible that Tyson manipulated an unsophisticated, unrepresented, non-English speaking injured worker by intentionally taking her simple request for additional treatment and attempting to force her to utilize her Section 85.39 IME rights. Both of these scenarios are possible, however, I find the most likely scenario to be an honest misunderstanding.

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