

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TERRY D. SCHUTTERLE,

Claimant,

vs.

D & R FEED, INC.,

Employer,

and

IOWA MUTUAL INSURANCE  
COMPANY,

Insurance Carrier,  
Defendants.

**FILED**  
**FEB 21 2019**  
**WORKERS' COMPENSATION**

File No. 5056927

APPEAL DECISION

Head Note No.: 2904

STATEMENT OF THE CASE

Defendants filed a notice of appeal concerning a dismissal of claimant's petition, in a June 22, 2017 ruling. Claimant has replied to the appeal.

Defendants contend allowing claimant to dismiss his petition, re-file and allegedly obtain further discovery is prejudicial to the defendants.

Under a standing order of delegation of authority by the workers' compensation commissioner under Iowa Code section 86.3, the undersigned enters this ruling for the workers' compensation commissioner. There is no right of appeal of this ruling to the workers' compensation commissioner.

ISSUE

Did the deputy abuse his discretion in allowing claimant to dismiss the petition without limiting further evidence, as requested by defendants?

FINDINGS OF FACT

Most of the findings of facts regarding this appeal decision are based on pleadings and motions filed in the administrative file for this matter.

On July 5, 2016 claimant filed a petition in this case alleging a traumatic injury to the back, neck, and body as a whole. The case was scheduled for a May 25, 2017 hearing.

On May 24, 2017, claimant filed a dismissal without prejudice. The rationale for the dismissal was claimant had yet to reach maximum medical improvement (MMI).

On May 24, 2017 claimant filed a supplement to the motion to dismiss. The basis for the supplement was claimant's counsel had recently received an expert opinion regarding claimant's carpal tunnel syndrome.

On May 24, 2017 defendants filed a resistance. Defendants did not object to the dismissal without prejudice. However, defendants moved to limit further evidence concerning permanency of claimant's cervical spine, and causation of claimant's carpal tunnel syndrome, if the petition was re-filed.

On May 24, 2017 a telephone conference was held with counsel for both parties with Deputy Workers' Compensation Commissioner Stanley McEldery. While there does not appear to be a recording of that hearing, briefs from both parties indicate Deputy McEldery dismissed the case without prejudice during the phone hearing. Based on briefs from both parties, it appears Deputy McEldery also allowed the parties to submit further arguments whether discovery was closed if claimant would re-file a petition. (Defendants' Appeal Brief, page 2; Claimant's Appeal Brief, pages 2-3)

On June 2, 2017 defendants filed a motion to partially close the record following dismissal without prejudice. Claimant filed a resistance to the motion. Defendants responded.

On June 22, 2017 Deputy McEldery filed an order dismissing the case without prejudice. That order read:

Claimant filed a motion to dismiss without prejudice his petition, File No. 5056927. The motion is granted. The petition is dismissed without prejudice. Defendants move to close discovery. There is no file pending on which to close discovery. If claimant refiles, discovery may proceed pursuant to our rules.

On June 26, 2017 defendants filed a motion for rehearing. The motion was denied.

#### CONCLUSIONS OF LAW

The only issue in dispute in this matter is whether the deputy abused his discretion in allowing claimant to dismiss the petition without prejudice, and not limiting discovery, as per defendants' motion.

876 IAC 4.35 makes the Iowa Rules of Civil Procedure applicable in proceedings before this agency.

Iowa R. Civ. P. 1.943 provides:

A party may, without order of court, dismiss that party's own petition, counterclaim, cross-claim, cross-petition or petition of intervention, at any time up until ten days before the trial is scheduled to begin. Thereafter a party may dismiss an action or that party's claim therein only by consent of the court which may impose such terms or conditions as it deems proper.

The review of a grant or denial of a motion for voluntary dismissal is reviewed for an abuse of discretion. Lawson v. Kurtzhals, 792 N.W.2d 251, 257 (Iowa 2010).

A dismissal without prejudice leaves the parties as if no action had been instituted. It ends the particular case, but is not such an adjudication as to bar a new action against parties. Venard v. Winter, 524 N.W.2d 163, 167 (Iowa 1994).

Defendants argue the holding in Lawson v. Kurtzhals indicates the deputy's ruling in this matter was an abuse of discretion. Defendants contend the holding in Lawson indicates the deputy should have ruled in defendant's favor and closed discovery to all issues except for MMI, permanent impairment and permanent restrictions regarding claimant's carpal tunnel syndrome. (Defendant's Brief, page 3)

In Lawson, the trial court granted defendants' motion in limine to limit plaintiff's damage. After that ruling a jury trial went on for three days. Plaintiff then rested his case in chief. Defendant moved for a directed verdict. Following the motion for a directed verdict, plaintiff moved for dismissal under Iowa R. Civ. P. 1.943. The trial court concluded claimant had an absolute right to dismiss the action at any time without prejudice. Id. At 254-255.

The Iowa Supreme Court noted when a motion to dismiss, under the rules, was filed within ten days or less, it was within the court's discretion to consent to dismissal, or to impose terms or conditions it deemed appropriate. Id. 256. In Lawson, because a jury had been empaneled, and because the hearing had gone on for three days, the Supreme Court found it was an abuse of discretion to dismiss without prejudice, and the trial court should have subjected plaintiff to a prior order, which limited claimant's damages.

The case at bar is different from Lawson. In this situation, the case had not yet gone to hearing. There was no order granting a motion in limine. There was no order limiting claimant's evidence due to claimant's failure to follow rules. In Lawson, the plaintiff gave no rationale for the motion to dismiss. In this situation, claimant alleged he was not at MMI, and claimant had recently received evidence concerning claimant's carpal tunnel syndrome.

I agree with the defendant that the ruling in this matter does not adequately articulate the rationale for granting the motion to dismiss without prejudice, and not granting defendant's motion to limit further discovery.

However, claimant's behavior in this matter, was not as grievous as counsel in Lawson. Claimant offered rationale for the motion to dismiss. The case had not gone to hearing. Claimant had not been sanctioned for failure to follow rules of discovery. Given this record, it was not an abuse of discretion to grant the motion to dismiss and to not limit future discovery as defendant requested. See Spading v. Quaker Oats and Second Injury Fund, File No. 5035299 (Ruling on motion to dismiss, May 22, 2012) (Claimant's motion to dismiss Fund denied under Lawson, as the motion was filed five days after hearing).

The deputy did not abuse his discretion in dismissing claimant's petition without prejudice. The deputy did not abuse his discretion in not granting defendants' motion to limit discovery in future filings in this matter.

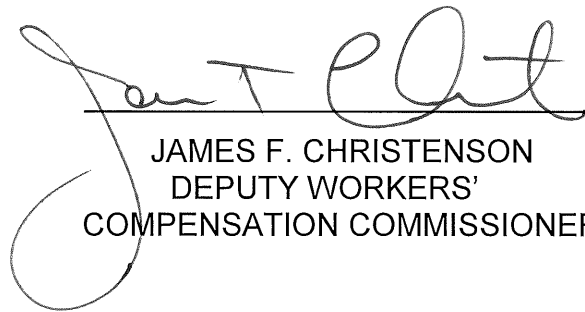
Claimant's counsel is respectfully requested that if a motion to dismiss is filed in future cases, that the motion not be filed one day before hearing. Failure to follow this request may potentially lead to limitations of discovery in future cases, as requested by defendants in this matter.

ORDER

Therefore, it is ordered:

The June 22, 2017 ruling is affirmed.

Signed and filed this 21st day of February, 2019.



JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

Copies to:

Paul J. McAndrew, Jr.  
Attorney at Law  
2771 Oakdale Blvd., Ste. 6  
Coralville, IA 52241  
[paulm@paulmcandrew.com](mailto:paulm@paulmcandrew.com)

Jeffrey W. Lanz  
Attorney at Law  
2700 Westown Pkwy, Ste. 170  
West Des Moines, IA 50266  
[jlanz@desmoineslaw.com](mailto:jlanz@desmoineslaw.com)

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