



TENNESSEE BUREAU OF WORKERS' COMPENSATION
IN THE COURT OF WORKERS' COMPENSATION CLAIMS
AT GRAY

PRESTON BENNETT,) **Docket No.:2020-02-0113**
 Employee,)
v.)
SURETECH CONSTRUCTION,) **State File No.:13451-2020**
 Employer,)
and)
TECHONOLOGY INSURANCE) **Judge Brian K. Addington**
COMPANY,)
 Carrier.)

ORDER DENYING MOTION TO COMPEL
MEDICAL EXAMINATION

This matter came before the undersigned Workers' Compensation Judge on August 13, 2020, upon Suretech Construction's (Suretech) Motion to Compel Medical Examination. Under 0800-02-21.18(2)(a) of its Practices and Procedures Rules, the Court decides this non-dispositive motion without a hearing.

History of Claim

Mr. Bennett fell and injured his back while repairing a roof on September 25, 2018. Dr. David Wiles performed surgery and treated Mr. Bennett's back. He determined Mr. Bennett reached maximum medical improvement and referred him to pain management in December. Dr. Wiles told Mr. Bennett to return to him as needed and discussed an impairment rating but never assigned one. At some point, Dr. Wiles moved to a different practice.

Mr. Bennett received authorized pain management until December 2019.¹ Then he returned to Dr. Wiles' former office and began treating with Dr. Selma Kominek.² In

¹ Mr. Bennett allegedly violated the terms of his pain management agreement.

² Suretech stated in its motion that Dr. Kominek's office visit was not authorized.

February 2020, Dr. Kominek assigned an impairment rating for Mr. Bennett's injuries, and shortly after, Mr. Bennett moved to Maryland.

Mr. Bennett filed a Petition for Benefit Determination (PBD) on February 24, 2020, for medical and permanent disability benefits. Suretech filed its own PBD in June requesting an independent medical examination (IME). Later it filed the motion to compel after Mr. Bennett refused to attend an IME appointment with Dr. Jeffrey Hazlewood in Tennessee.

Suretech alleges Dr. Kominek's medical report is "inaccurate," and requests to schedule its own evaluation. Citing Tennessee Code Annotated section 50-6-204(d)(1) and Rule 35 of the Tennessee Rules of Civil Procedure, Suretech argues its request for an examination is reasonable because it was made less than a month after receiving Dr. Kominek's report. Further, it contends that it "considered options" for obtaining an IME in Maryland. However, Maryland physicians do not use the AMA Guidelines. Suretech also asserts that it has offered to pay reasonable travel expenses for the evaluation and that Mr. Bennett should have reasonably expected to return to Tennessee from Maryland because of his workers' compensation claim.

Mr. Bennett argues Suretech's request is unreasonable. He asserts that he is, "paraplegic with continued issues concerning skin shearing and subsequent decubitus ulcers [prohibit him] from any significant traveling." He said he moved to Maryland to be closer to family who could assist with his care. Since then, Suretech has authorized pain management with a physician in Alexandria, Virginia. Mr. Bennett argues that Suretech can obtain an evaluation from a physician in nearby Virginia as that state recognizes the 6th edition of the AMA Guidelines.

Legal Analysis

Tennessee Code Annotated section 50-6-204(d)(1) states:

The injured employee must submit to examination by the employer's physician at all reasonable times if requested to do so by the employer, but the employee shall have the right to have the employee's own physician present at the examination, in which the employee shall be liable to the employee's physician's service.

The Tennessee Supreme Court provided direction in applying T.C.A. §50-6-204(d)(1) in *Overstreet v. TRW Commer. Steering Div.*, 256 S.W.3d 626 (Tenn. 2008). The Court concluded in *Overstreet* that, "a plain reading of Tennessee Code Annotated section 204 gives the employer a right to compel the employee to undergo an independent medical evaluation, so long as the request is 'reasonable.'" *Id.* at 636. The Court added that the

statutory language “provides the employer with the right to have the employee examined by a doctor of its choosing.” *Id.* at 637.

The Tennessee Workers’ Compensation Appeals Board defined the reasonableness standard in *King v. Big Binder Express, LLC*, 2016 TN Wrk. Comp. App. Bd. LEXIS 92, (Dec. 7, 2016). In *King*, the Court stated, “[T]he reasonableness of an employer’s request must be examined in light of all the surrounding circumstances, and when an employer has sufficient reason to question the opinion of an authorized physician, it may do so by seeking an examination as authorized by section 50-6-204(d)(1).” *Id.* at 13.

Here, the Court finds Suretech’s request for Mr. Bennett to travel to Tennessee for an IME is not reasonable. Suretech has not shown that Dr. Kominek’s evaluation is inaccurate. It also has not explained why Dr. Hazlewood is the only physician that can accurately evaluate Mr. Bennett’s physical impairment, or why he cannot travel to examine Mr. Bennett. Further, the obstacles of Mr. Bennett traveling long distances in his physical condition are obvious and further compounded by the threat of the current Covid-19 nationwide pandemic. Therefore, the Court cannot find Suretech’s current request for an IME with Dr. Hazlewood in Tennessee reasonable and denies it.

This Order does not preclude Suretech from pursuing an IME by a physician of its choosing at a reasonable time and place.

It is so **ORDERED**.

ENTERED, August 13, 2020.

Brian K. Addington

BRIAN K. ADDINGTON, JUDGE
Court of Workers’ Compensation Claims

CERTIFICATE OF SERVICE

I certify that a copy of this Order was sent on August 13, 2020.

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