MISSOURI COURT OF APPEALS
WESTERN DISTRICT

MICHAEL ERWIN, Appellant,
v.
MIDWAY ARMS, INC. d/b/a MIDWAY, USA, Respondent.

DOCKET NUMBER WD87161

DATE: March 4, 2025

Appeal From:

The Labor and Industrial Relations Commission

Appellate Judges:

Before Division Two: Janet Sutton, Presiding Judge, and Alok Ahuja and Mark D. Pfeiffer, Judges

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Attorneys:

Alex R. Lumaghi and James M. Hoffman, St. Louis, MO, Attorneys for Appellant.

Eric T. Lanham, Kansas City, KS, Gabrielle A. Stein, Kansas City, MO, and Stephen A. McManus, St. Louis, MO, Attorneys for Respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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Michael Erwin ("Employee") appeals from the Final Award of the Labor and Industrial Relations Commission ("Commission"), which reviewed the award from an Administrative Law Judge ("ALJ") relating to Employee's workers' compensation claim against his employer, Midway Arms, Inc. ("Employer").

On January 3, 2017, Employee suffered a work-related back injury that was later determined to be the prevailing factor of his disc herniation, anxiety, and depression. On January 12th, Employee visited Doctor, Employer's selected medical examiner. At this visit, Doctor diagnosed Employee with a herniated disc. After several more visits and a course of physical therapy, Doctor opined on June 7, 2017, that Employee had reached maximum medical improvement ("MMI") and released him from care with a prescription for pain medication and muscle relaxants. Doctor assessed a permanent partial disability rating of 10%.

Between June 29, 2017, and July 17, 2017, Employee's attorney sent three letters demanding additional medical treatment from Employer, citing Employee's worsening back pain and newly emerging suicidal ideations. Employer responded that it would take an additional deposition from Employee and decide on further treatment thereafter.

After the deposition, on August 21, 2017, Employer notified Employee that it refused to authorize any further treatment, citing Doctor's June 7th MMI opinion, and offered to settle Employee's case on terms that included compensation for only a 7.5% permanent partial disability. After receiving this unambiguous rejection of his demand, Employee sought out further self-guided treatment and eventually underwent back surgery. During the course of this self-guided treatment, Employer's attorney contacted Employee's attorney several times, requesting medical records of the self-guided treatment and offering to settle the case at 10% permanent partial disability. Employee's attorney refused to turn over any medical records until October 16, 2018, after Employee underwent his back surgery.

On July 8, 2020, Doctor reevaluated Employee and concluded Employee's work activity was the prevailing factor of his herniated disk. But, Doctor then submitted a final report on August 18th, which concluded for the first time that Employee's original scans from 2017 demonstrated that a degenerative spine condition was the prevailing factor of his herniated disk, not work-related activity. Then in a subsequent deposition, Doctor retracted his August 18th conclusion and further opined that Employee acted reasonably in seeking further medical treatment.

On June 20, 2022, the parties appeared for a hearing before an ALJ. At the hearing, Employer, through Doctor's testimony, argued Employee's injury was not work-related. On cross-examination, Doctor admitted that Employer never informed him of any of the three letters or of Employee's new symptoms and that he would have immediately seen Employee for further treatment if he had been notified.

The ALJ concluded that work-related activity was the prevailing factor of Employee's medical issues and that all of Employee's self-guided treatment was reasonable and medically necessary. The ALJ, in relevant part, awarded Employee the cost of his self-guided treatment and sanctions for Employer's extreme and outrageous conduct in failing to consult Doctor regarding Employee's new symptoms before denying further medical treatment and for unreasonably contesting the work-related nature of Employee's medical issues at the hearing.

On Employer's appeal of the ALJ's award, the Commission adopted all of the ALJ's factual findings and legal conclusions except that it reversed the award for past medical expenses and for sanctions. In reversing the award of past medical expenses, the Commission concluded Employee failed to give sufficient notice to Employer before seeking self-guided treatment because Employee did not provide a medical opinion to refute Doctor's June 7, 2017 opinion that Employee reached MMI. Additionally, the Commission concluded that Employee deprived Employer of the opportunity to guide Employee's treatment by refusing to turn over medical records until after Employee's self-guided treatment was completed. In reversing the sanctions award, the Commission concluded that Employer did not act extremely and outrageously because Employer was entitled to rely on Doctor's medical opinions in refusing to authorize further treatment and in contesting the issue of causation at the hearing before the ALJ.

Employee appeals the Commission's award, raising three points. In Points I and II, Employee argues the Commission committed legal and factual error in reversing the award for past medical expenses. In Point III, Employee contends the Commission abused its discretion in reversing the ALJ's award of sanctions.

AFFIRMED IN PART AND REVERSED IN PART.

Division Two holds:

1. Missouri's workers' compensation system requires employers to pay for an employee's reasonable and medically necessary treatment of work-related medical issues. The employer has the right to guide and participate in the employee's course of treatment by choosing which treatments and providers to authorize. However, if an employee demands further treatment and the employer refuses the demand, the employer loses its right to guide that treatment, and the employer will still be liable for any rejected treatment later deemed reasonable and medically necessary. In making a demand, an employee is not required to produce any supporting medical evidence, even when the demand contradicts a prior medical opinion. Here, the parties do not dispute that Employer rejected Employee's demand for additional treatment or that the entirety of Employee's self-guided treatment was reasonable and medically necessary. Thus, when Employer refused to authorize any and all further treatment, it became liable for all of Employee's subsequent reasonable and medically necessary self-guided treatment. Furthermore, Employee no longer had an obligation to update Employer on the progress of the self-guided treatment because Employer no longer had a right to participate in it. Thus, the Commission erred in reversing the ALJ's award of Employee's past medical expenses.

2. The Commission may, in its discretion, assess the costs of a proceeding against a party that unreasonably defended the proceeding. When the Commission declines to award sanctions, its decision will be upheld so long as the decision does not constitute an abuse of discretion, even if the reviewing court would have decided the issue differently. Here, the Commission provided an explanation for declining to award sanctions that was not an abuse of its discretion under the circumstances. Therefore, the Commission did not err in reversing the ALJ's award of sanctions.

Opinion by: Mark D. Pfeiffer, Judge March 4, 2025

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