Shumate, William

JOINDER

Provider as necessary party

Where the ultimate resolution of an appeal impacts the self-insured employer's responsibility to pay the provider for services and when the provider moved to intervene after issuance of a proposed decision and order after the matter was tried without notice to the provider, the Board joined the provider as a necessary party and remanded the matter for further proceedings to consider the provider's assertions. ***....In re William Shumate,* Order Vacating Proposed Decision and Order, BIIA Dec., 91 4962 (1992)**

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: WILLIAM E. SHUMATE	)	**DOCKET NO. 91 4962**
	)	
	)	**ORDER VACATING PROPOSED DECISION AND**
	)	**ORDER AND REMANDING APPEAL FOR**
CLAIM NO. S-786966	)	**FURTHER PROCEEDINGS**

APPEARANCES:

Claimant, William E. Shumate, by
H. Frank Stubbs, Inc., P.S., per
William L. Shaffer, Attorney

Employer, Weyerhaeuser Company, by
Hall & Keehn, per
Linda Bauer, Paralegal, and Janet L. Smith and Thomas G. Hall, Attorneys

Provider, Mark Van Hemert, D.C., by
Rodney Carrier, Attorney

Department of Labor and Industries, by
The Office of the Attorney General, per
Anne C. Peckman and Michael Davis-Hall, Assistants

This is an appeal filed by the self-insured employer, the Weyerhaeuser Company, on September 23, 1991 from an order of the Department of Labor and Industries dated September 12, 1991. The order affirmed an earlier order dated July 23, 1991 which required the self-insured employer to pay Dr. Mark Van Hemert's billing for treatment rendered to the claimant for the industrial injury of December 12, 1985, because the treatment was "rendered in good faith" pending final resolution of previous litigation regarding the claimant's entitlement to industrial insurance benefits. **REMANDED FOR FURTHER PROCEEDINGS**.

DECISION

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on a timely Petition for Review filed on behalf of the provider, Dr. Mark Van Hemert, on August 28, 1992 to a Proposed Decision and Order entered on August 4, 1992 and mailed on August 12, 1992, in which the order of the Department dated September 12, 1991 was reversed and the matter remanded to the Department with directions to issue an order requiring the self-insured employer to pay Dr. Mark Van Hemert's billings for treatment rendered to the claimant for the period from January 11, 1986 through March 10, 1986 in the amount of $573.36.

Weyerhaeuser Company, by its appeal from the Department order dated September 12, 1991, raises the issue of the correctness of Dr. Mark Van Hemert's bills for chiropractic treatment rendered to William E. Shumate for conditions caused by the industrial injury of December 12, 1985. The Department order directs Weyerhaeuser Company to pay Dr. Van Hemert's entire billing for treatment rendered. Weyerhaeuser contends that only a small portion of Dr. Van Hemert's bill is its responsibility.

On June 25, 1992, at a hearing in Tacoma, the claimant, William E. Shumate, Weyerhaeuser Company, and the Department of Labor and Industries, through their respective representatives, stipulated facts into the record and agreed that our industrial appeals judge could issue a Proposed Decision and Order based upon those facts. The stipulated facts placed in the record at the June 25, 1992 hearing established the Board's jurisdiction to consider the self-insured employer's appeal, and also determined that only part of the treatment provided by Dr. Van Hemert for Mr. Shumate's industrial injury of December 12, 1985, i.e., treatment provided between January 11, 1986 and March 10, 1986, was proper and necessary for the conditions related to that injury, and that the rest of such treatment, i.e., that provided between March 11, 1986 and November 11, 1988, was not proper and necessary for such conditions. Based upon the stipulated facts, our industrial appeals judge issued the Proposed Decision and Order which is the subject of Dr. Van Hemert's "Motion to Intervene and Petition for Review".

If our consideration is limited to the facts stipulated by the parties present at the June 25, 1992 hearing, the Proposed Decision and Order contains an appropriate resolution of the issues presented by this appeal. We, however, cannot limit our consideration solely to those stipulated facts, as it is apparent that Dr. Van Hemert is a necessary party to this proceeding. As a party, he did not have notice of the June 25th hearing and was not afforded an opportunity to participate. Review of the contents of our file reveals that the first document sent by this agency to Dr. Van Hemert or his representative was a letter dated September 1, 1992 from the Board's Executive Secretary, in response to his "Motion to Intervene and Petition for Review". Prior to the September 1, 1992 letter, none of our notices, orders, or other correspondence regarding this appeal were communicated to Dr. Van Hemert or his representative. Dr. Van Hemert cannot be considered to be bound by an agreement that occurred during a proceeding and affected his rights, when he had not received notice of that proceeding, as required by our rules. WAC 263-12-100. In light of the fact that Dr. Van Hemert was not provided with the necessary notice of the hearing, we are compelled to recognize his right to

contest, through a Petition for Review to this Board, any Proposed Decision and Order resulting in a reduction of the amount he may be entitled to as a result of his medical services under this claim. If we were to make final disposition based solely on the stipulated facts (thereby inviting Superior Court review), we would be abandoning our duty to reduce litigation and to fully and fairly resolve the only issue raised by this appeal, i.e., the extent to which Dr. Van Hemert is entitled to payment for his treatment services rendered to Mr. Shumate.

A further important reason exists for remanding this matter to provide Dr. Van Hemert an opportunity to participate herein regarding the payment of his billings. After reviewing the Board and Department files in this matter in order to determine our jurisdiction, it is clear that the Department has failed to communicate its orders regarding payment of his billings to Dr. Van Hemert. On both the September 12, 1991 Department order which is the subject of this appeal, and the July 23, 1991 Department order which it affirmed, Dr. Edward P. Hoffman is named as the attending physician or provider to whom the orders were sent. Review of the Department's file contained in the microfiche, which was done solely for jurisdictional purposes, reveals no communications between the Department and Dr. Van Hemert other than correspondence of an informational nature mailed prior to the issuance of the Department order dated July 23, 1991. It appears that the September 12, 1991 Department order was never communicated to Dr. Van Hemert and he may still be in a position to file a timely notice of appeal from that order.[1]

In order to avoid piecemeal litigation, Dr. Van Hemert must be joined as a necessary party to this proceeding. Joinder of the health care provider, where the only issue involved is payment of his billings for treatment previously provided, must occur under the provisions of CR 19(a) and WAC 263-12-045(2)(h). This would help avoid the type of problem addressed in our decision in In re Gloria R. Flores, Dckt. No. 89 5052 (March 25, 1991) and discussed by the Supreme Court in Georgia Pacific v. Dep't of Labor & Indus., 47 Wn.2d 893 (1955). It follows that in order to resolve the issue presented by this appeal in a rational manner, all of the necessary parties must be joined so that the ultimate disposition will be final as to all those affected.

We hereby direct that Dr. Mark Van Hemert, the affected health care provider, be joined as a necessary party to this appeal. Further proceedings will hereafter be scheduled and conducted,

[1] As the document filed by Dr. Van Hemert was designated as a "Motion to Intervene and Petition for Review, it has also been docketed as a notice of appeal from the September 12, 1991 order and has been granted subject to proof of timeliness. While Dr. Van Hemert's appeal could be handled separately from the self-insured employer's, it makes no sense to handle it in this fashion and will be considered in connection with this appeal on remand.

together with proceedings on Dr. Van Hemert's appeal of the Department order dated September 12, 1991.

Pursuant to WAC 263-12-145(4) and RCW 51.52.102, we hereby set aside the Proposed Decision and Order entered on August 4, 1992 and remand this appeal to the mediation and hearing process for the joinder of Dr. Mark Van Hemert as a necessary party and for scheduling of further proceedings. A further Proposed Decision and Order shall be issued after all parties to these proceedings have had an opportunity to present such evidence as is appropriate. The Proposed Decision and Order shall be based upon the entire record, and the parties shall have the right, pursuant to RCW 51.52.104, to petition for review of such further Proposed Decision and Order.

It is so **ORDERED**.

Dated this 30th day of November, 1992.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/
S. FREDERICK FELLER Chairperson

/s/
FRANK E. FENNERTY, JR. Member

/s/
PHILLIP T. BORK Member