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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 326 - interlocutory proceedings
Workers' Compensation and Rehabilitation Act 2003 - s. 556 - additional medical evidence

Edmonton Nominees Pty Ltd AND Q-COMP & Another (WC/2008/99)

DEPUTY PRESIDENT SWAN

5 December 2008

DECISION

Edmonton Nominees Pty Ltd (the applicant) is the appellant in an application [WC/2008/93] made against the Review Unit of Q-COMP (the respondent).

The applicant has made an application for an order for a medical examination pursuant to s. 556 of the *Workers' Compensation and Rehabilitation Act 2003* (the Act) that Ms Dana Louise Schalkwyk (the claimant) submit to a medical examination by Dr Scott Campbell (Neurosurgeon) or Dr John Baker (Neurosurgeon).

The following orders were sought:

- "1. An Order pursuant to Section 556 of the *Workers Compensation and Rehabilitation Act 2003* that the Claimant, Dana Louise Schalkwyk submit to a medical examination by Dr Scott Campbell (Neurosurgeon) or Dr John Baker (Neurosurgeon).
2. The following decision:
 - (a) That the Claimant/worker Dana Louise Schalkwyk submit to a medical examination by Dr Scott Campbell or Dr John Baker.
 - (b) That the appointment and examination is to take place at the first opportunity that Dr Campbell or Dr Baker is available to consult with Ms Schalkwyk.

- (c) That the Appellant will be liable for the costs of and incidental to the examination and report, such costs being the cost of examination, the report, and, upon reasonable proof of such loss, Ms Schalkwyk's usual wages or salary lost as a direct consequence of her attendance for the examination only.
- (d) That in the event that Ms Schalkwyk cancels the appointment, or otherwise fails, refused or neglects to attend the appointment, she will be liable for any and all associated cancellation fees."

Section 556 of the Act states:

"556 Additional medical evidence

- (1) This section applies if -
 - (a) the condition of a claimant or worker who has, or is said to have, sustained an injury is relevant to the appeal; or
 - (b) the cause, nature or extent of the injury or incapacity arising from the injury is relevant to the appeal.
- (2) The appeal body may, at any time before or after the start of the hearing, order the claimant or worker to submit to a personal examination by 1 or more specified registered persons.
- (3) The appeal body may also, as the appeal body considers appropriate, make an order about -
 - (a) the way, time and place of the examination; and
 - (b) costs of the application for the order and of the examination.
- (4) An opinion formed on the examination must be given to the respondent and the respondent must make the opinion available to the appellant.
- (5) Subsection (6) applies if the claimant or worker -
 - (a) fails, without reasonable excuse, to attend for the examination at the time and place ordered by the appeal body; or
 - (b) having attended, refuses to be examined by a registered person; or
 - (c) obstructs, or attempts to obstruct, the examination.
- (6) Any entitlement the claimant or worker may have to compensation is suspended until the claimant or worker undergoes the examination."

The Commission was advised that the respondent neither supported nor opposed the application and that the claimant did not oppose the application.

The applicant, referring to the substantive application [WC/2008/93] submitted that it disputed that any of the duties performed by the claimant had caused or contributed to the injury suffered by the claimant. To this end, it was submitted that whilst there had been one medical opinion available, "It is essential that evidence of those duties be put to the appropriate medical specialist, in this case a neurosurgeon, so that appropriate questions can be asked and answered in relation to the likely mechanism of any injury." [Transcript, p. 1-3, lines 30-34.]

Under these circumstances, the Commission grants the application.

Order accordingly.

D.A. SWAN, Deputy President.

Hearing Details:

2008 27 November

Released: 5 December 2008

Appearances:

Mr M. Healy, Counsel, instructed by McCarthy Durie Ryan Neil, Solicitors, for the applicant.

Mr S. McLeod, Counsel, directly instructed by Ms C. Shedden, of Q-COMP, for the respondent.

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