

MOTIONS PRACTICE

Saturday, October 6, 2018
Jekyll Island Convention Center
Jekyll Island, Georgia

Introduction by:

The Honorable Richard Sapp, III
State Board of Workers' Compensation
Rome, Georgia

Discussion by:

William J. Rawls, II
Mozley, Finlayson & Loggins, LLP
Atlanta, Georgia

Joshua A. Carroll
Buzzell, Graham & Welsh, LLP
Macon, Georgia

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Motions Practice - Introduction

by Hon. Richard H. Sapp, III, Administrative Law Judge

In general, motions practice is an important part of litigation as it helps narrow and define issues prior to the actual trial of a case. It also can provide clarity about law issues and fact issues prior to trial which helps both the court and the parties. Fortunately, a vibrant motions practice is available for workers compensations cases in Georgia. Although the workers compensation law in Georgia contains some special evidence rules and discovery practice rules, in general the Civil Practice Act does govern discovery and the Georgia rules of evidence do apply. Motions in a workers compensation case often concern evidence issues or discovery issues. The law is clear that judges in a workers compensation case have the power to hear and dispose of motions. There are particular motions described in the law, but the law also states that a workers compensation judge has the power to hear and dispose of "all other motions", thus the power of the judge in that regard is broadly defined. (OCGA § 34-9-102(c)). Early in my time as a judge, I was asked to contribute an article to the Georgia State Bar Workers Compensation Law Section Newsletter (Summer 2017) with my thoughts on my job as a rookie judge. The article included a section on motions, and my thoughts and methodology regarding motion practice in a workers compensation case still hold true. Below is a portion of that article:

Regarding my workload tasks outside the courtroom, the most surprising aspect has been the volume of motions that are filed. As a hearing division judge, the motions I see are typically in association with litigation that eventually will proceed to a hearing before me, if not otherwise resolved. So the motions I see are not the motions that are filed outside the litigation process, such as a physician-change motion in a case that is not otherwise in litigation. I find the volume of motions in litigated cases surprising only because in my several decades of practice, I rarely was involved with one. That is, I rarely filed one and I rarely was on the receiving end of one. I don't mention this to necessarily discourage motion filings, because I see many motions that are needed, and even if not, if the parties feel they need our help by way of motion, it is our job to help in that manner.

I would encourage lawyers to follow the directive in Board Rule 102(D)(2) to consult with the opposing lawyer and discuss the issue and make a good faith effort to work out the issue before filing a motion. At least be transparent with one another and have a frank and open discussion about the issue and listen to the opposing lawyer's view. Possibly a compromise might be in order, or if not, at least after discussion of the issue and contemplation of the opposing view, the issue can be narrowed and more succinctly stated in a motion. I found this to be true during my practice and likely that avoided the need for a motion in many cases.

It is important for the parties to keep the judge informed about the status once a motion is filed. Typically, a judge is assigned to the motion soon after it is filed and most times well before the due date of a response. I will monitor that motion with an eye toward the due date of the response. I will also check the hearing date and anticipate of course that a ruling is needed before the scheduled hearing. If the parties work out the issue during this process, which is of course encouraged and sometimes does happen, it is important to inform the judge and withdraw the motion so that a ruling does not take place. As a practicing attorney, I always withdrew the motion I filed if the issue resolved, and if I was the recipient of a motion and the issue resolved, I would typically file a response stating the issue was resolved so that the judge was definitely informed and so that I did not let a response deadline pass without making a filing (this, assuming the lawyer filing the motion did not go ahead and clearly withdraw it).

Lastly regarding motions, sometimes lawyers will call on conference call and seek the guidance of a judge, sometimes by agreement, and sometimes one of the lawyers is reluctantly on call. Usually to make a ruling on an issue as a judge, I prefer that the parties file a written motion and reply which gives me evidence and argument with legal citation; a judge can just make a better decision in that context. If I have a conference call and determine that there is time for that better process to occur, I inform the parties that I am happy to discuss the issues and I'll even give preliminary thoughts on the issue, in hopes that it will guide them and possibly help them resolve the issue, but I tell them in that call that I will not generate an order just based on the call. Conversely, there are issues that require a ruling based on a conference call

if the motion process will not work because we are on the eve of a hearing or a dispute is time-sensitive. Some issues such as a motion to quash a subpoena just served for a hearing within a few days, of course, requires an immediate ruling and in that case I will make a ruling in the conference call after hearing the arguments of the parties.

MOTIONS PRACTICE - DISCUSSION

I. Overview of Powers Granted to the Administrative Law Judge to Entertain Motions

The Georgia Workers' Compensation Act ("the Act") enumerates broad authority to the Administrative Law Judge ("ALJ") to address motions brought by parties to a workers' compensation claim:

O.C.G.A. § 34-9-102 (c): Authority of administrative law judge. The administrative law judge conducting the hearing shall have, in addition to all powers necessary to implement this chapter, the following powers: ... **to dispose of motions to dismiss for lack of board jurisdiction, ...to issue interlocutory orders, ...to rule upon or dispose of all other motions...** .

O.C.G.A. § 34-9-102(c) (2018).

A. Motion to Dismiss for Lack of Board Jurisdiction

A motion to dismiss for lack of jurisdiction may be brought when certain facts exist which show as a matter of law that the State Board of Workers' Compensation ("the Board") may not exercise jurisdiction over a claim. Such circumstances may include, but are not limited to, accidents occurring outside the state involving out of state employers, accidents involving contracts for employment made outside the state, and accidents where an employer is not subject to the act.

B. “All Other Motions”

O.C.G.A. § 34-9-102(c) includes a catch-all provision authorizing the ALJ to, “rule upon or dispose of all other motions.” What “other motions” does the Act contemplate in enumerating this power? Motions for interlocutory orders, motions to compel discovery, and pre-hearing evidentiary motions are all explicitly covered in the Act and/or Board Rules. The following are examples of such motions. This list is not meant to be exhaustive.

i. Motion to Recommence/Suspend Income Benefits

Board Rule 102(D)(5) states: “An Administrative Law Judge may issue an interlocutory order suspending or reinstating payment of weekly benefits to an employee pending an evidentiary hearing.” B.R. 102(D)(5) (2018). Use of the word “reinstatement” in the Board Rule appears to presuppose that weekly benefits have been paid to the employee at some time in the past. A motion to recommence benefits is typically filed by the employee when weekly benefits have been improperly unilaterally suspended or when an employer fails to recommence weekly benefits in accordance with the Act and Board Rules.

In addition to Board Rule 102(D)(5), a motion to recommence benefits is discussed in Board Rule 240(f), in the context of offers of suitable employment made pursuant to O.C.G.A. § 34-9-240 and Board Rule 240.

ii. Motion to Direct One Employer/Insurer to Pay Benefits Pending Determination of Liability

When an issue arises as to which of two or more employers or insurers is liable for payment of benefits to an employee, Board Rule 102(D)(6) allows an ALJ to issue an interlocutory order requiring an employer or one of the insurers to pay weekly income benefits and medical expenses pending a determination of liability. The Board Rule reads, as follows:

- (6) Where the issue is which of two or more employer/insurers is liable, the Administrative Law Judge or the Board may issue an interlocutory order directing the employer or one of the insurers to pay weekly benefits and medical expenses until the determination of liability of an insurer has been made. Reimbursement may thereafter be ordered where appropriate.

B.R. 102(D)(6) (2018).

iii. Motion for Certificate of Immediate Review

If a party wishes to file an application for review of an ALJ's interlocutory order with the Appellate Division, Board Rule 103(d) requires that the appealing party first acquire a certification of immediate review from the ALJ. The Rule reads:

The Board will not accept an application for review of an interlocutory order unless the Administrative Law Judge, in the exercise of his or her discretion, certifies that the order or decision is of such importance to the case that immediate review should be had. In the event the Administrative Law Judge certifies his or her interlocutory order for immediate

review, in order for the Appellate Division to have jurisdiction under O.C.G.A. § 34-9-103(a), a party must file an application for review with the Appellate Division within twenty days of the date of the original interlocutory order.

B.R. 103(d) (2018).

Accordingly, any party wishing to apply for review of an interlocutory order must first act quickly to file a motion for certificate of immediate review with the ALJ. Such a certificate is granted at the ALJ's discretion, taking into account whether the order is of such importance to the case that review should be had. Obtaining the certificate from the ALJ in no way tolls or extends the twenty (20) day time limitation for filing the application of review with the Appellate Division. A party opposing a certification for immediate review should likewise act quickly to submit a brief in opposition to the request, as there is no requirement that the ALJ consider the briefs of all parties before granting or denying a certification request.

iv. Discovery Motions Pursuant to Georgia Civil Practice Act

O.C.G.A. § 34-9-102(d) specifically incorporates the discovery procedures of the Georgia Civil Practice Act as it relates to claims pending before an ALJ pursuant to the Act:

O.C.G.A. § 34-9-102(d) Discovery procedures.

(1) Discovery procedures shall be governed and controlled by Chapter 11 of Title 9, the “Georgia Civil Practice Act.”

(2) The term “administrative law judge” shall be substituted for the word “court” when construing any procedural rule, provided that any administrative law judge shall seek

enforcement of orders as stated in subsection (h) of this Code section.

(3) The administrative law judge may admit as evidence at the hearing and at all future hearings evidence obtained by depositions, interrogatories, or admissions of fact, whether or not the deponent is available to testify in person at the hearing and whether or not the evidence was taken originally for the purpose of discovery or evidence, or both.

O.C.G.A. § 34-9-102(d) (2018).

Board Rule 102(F)(2) states, “Discovery conducted pursuant to the Civil Practice Act shall only be permitted after a hearing has been requested in the claim, or as otherwise specified in these rules, or by agreement of the attorneys or permitted by an Administrative Law Judge or the Board.” B.R. 102(F)(2) (2018). As such, any motion to enforce discovery procedures pursuant to the Civil Practice Act should only be filed if one of these conditions is met.

Such motions may include, but are not limited to:

- (1) Motion to Compel Attendance at Deposition;
- (2) Motion to Compel Interrogatory Responses;
- (3) Motion to Compel Production of Documents and/or Things;
- (4) Motion to Compel Entry Upon Land for Inspection or Other Purposes;
- (5) Motion to Withdraw Admission(s);
- (6) Motion to Compel Identification of 30(b)(6) Representative.

v. Motion for Change in Physician or to Authorize Treatment

O.C.G.A. § 34-9-200(b) allows for the Board, the employee, or the employer to move for an order changing a physician or authorizing other or additional treatment:

O.C.G.A. § 34-9-200(b): Upon the request of an employee or an employer, or upon its own motion, the board may in its judgment, after notice is given in writing of the request to all interested parties and allowing any interested party 15 days from the date of said notice to file in writing its objections to the request, order a change of physician or treatment and designate other treatment or another physician; and, in such case, the expenses shall be borne by the employer upon the same terms and conditions as provided in subsection (a) of this Code section.

O.C.G.A. § 34-9-200(b) (2018).

vi. Motion to Suspend Compensation for Failure to Submit to Examination by the Authorized Treating Physician

O.C.G.A. § 34-9-200(c) authorizes the ALJ to issue an order suspending an employee's right to compensation if the employee refuses to submit for examination by the authorized treating physician or if the employee in any way obstructs such an examination requested by and provided for by the employer. If so ordered, the suspension of compensation continues until such time as the employee's refusal or objection ceases.

O.C.G.A. § 34-9-200(c): As long as an employee is receiving compensation, he or she shall submit himself or herself to examination by the authorized treating physician at reasonable times. If the employee refuses to submit himself or herself to or in any way obstructs such an examination requested by and provided for by the employer, upon order of the board his or her right to compensation shall be suspended until such refusal or objection ceases and no compensation shall at any time be payable for the period of suspension unless in the opinion of the board the circumstances justify the refusal or obstruction.

O.C.G.A. § 34-9-200(c) (2018).

vii. Motion to Challenge Testimony of Expert Under O.C.G.A. § 24-7-702

Board Rule 102(E)(3)(e) states:

“Any challenge to the testimony of an expert under O.C.G.A. § 24-9-67.1 (24-7-702 effective 1/1/13) shall be made not later than 15 days prior to the hearing. Failure to raise a timely challenge shall result in waiver of the challenge unless otherwise agreed to by the attorneys and the Administrative Law Judge.”

B.R. 102(E)(3)(e) (2018).

O.C.G.A. § 24-7-702 codifies the Daubert standards for admissibility of expert opinions, as adopted by the Georgia Legislature. O.C.G.A. § 24-7-702(g) includes a caveat specifically addressing proceedings brought pursuant to the Act: “This Code section shall not be strictly applied in proceedings conducted pursuant to Chapter 9 of Title 34 or in administrative proceedings conducted pursuant to Chapter 13 of Title 50.” O.C.G.A. § 24-7-702(g) (2018).

II. Procedural Considerations for Filing and Responding to Motions

For the prudent practitioner, there is no substitute for the careful reading (and re-reading) of the Board Rules. An attorney filing or responding to a motion before the Board must have a thorough understanding of Board Rules governing various types of motions. Before any motion is filed with the Board, the moving party must confer in good faith with the opposing party or counsel to resolve the dispute. However, some issues require an ALJ's intervention.

If the issue cannot be resolved in good faith, the moving party must first ensure a motion is filed utilizing the correct Board Form, as prescribed by the Board Rules. The moving party must also ensure that all requirements for filing a particular motion are satisfied, such as rules governing supporting evidence, page limitations on briefs and exhibits, the filing of ancillary Board Forms, and certificates of service upon all parties to the claim.

A. First Things First: Good-Faith Effort to Resolve Dispute

Before filing a motion, Board Rule 102(D)(2) requires that the moving party confer with the opposing party or counsel, in good faith, to resolve the issues involved:

Prior to filing a motion, including requests for documents pursuant to Rule 102(F)(1), the moving party shall confer with the opposing party, or counsel if the party is represented, in a good-faith effort to resolve the matters involved.

B.R. 102 (2018).

Although there appears to be no requirement that such a good faith effort be made in writing, the careful practitioner will document evidence of all efforts to resolve the

dispute and ensure that his/her client's position is succinctly articulated via email or letter before filing the motion. Evidence of such efforts may prove useful if attorney's fees are to be sought at a hearing due to the necessity of filing the motion in question.

B. Filing the Motion

i. Selecting the Proper Board Form

When filing a motion with the Board, the filer must first select the proper Board Form to utilize. The Board Rules identify three (3) separate forms to be used for filing a motion with the Board. The corresponding Board Rules read, in pertinent part:

Rule 102(D) Motions and Interlocutory Orders Pending a Hearing

(1)(a) All motions and objections shall be made on **Form WC-102D**, with the exceptions of motion for reconsideration and request for a change of physician/additional medical treatment under Board Rule 200(b)(1). ...

(1)(b) When filing a motion for reconsideration, the parties or attorneys shall: ... (2) use the **ICMS doc-type labeled motion for reconsideration...**

B.R. 102 (2018).

Rule 200(b)(1) Changes in treatment

...If an agreement cannot be reached, the party requesting the change shall make the request on a **Form WC-200b**.

B.R. 200 (2018).

Accordingly, all motions except for: (a) a motion for reconsideration; or (b) a request for change of physician/additional medical treatment shall be filed by utilizing Form WC-102D. A motion for change in physician or for additional medical treatment

requires the use of Form WC-200b. A motion for reconsideration shall be filed by utilizing the ICMS document labeled “Motion for Reconsideration.” [A motion for reconsideration of an order addressing a change in physician or for additional medical treatment shall also be filed by utilizing the “Motion for Reconsideration” document on ICMS. *See* B.R. 200(b)(3)]

ii. Observing Page Limits

The page limit for Form WC-102D motions and objections is fifty (50) pages, including briefs and exhibits, unless otherwise permitted by an ALJ or the Board. B.R. 102(D)(1)(a). The same fifty (50) page limit, inclusive of briefs and exhibits, applies to motions and objections made using Form WC-200b, unless otherwise permitted by an ALJ or the Board. B.R. 200(b)(1). The page limit for motions for reconsideration is twenty (20) pages, including briefs and exhibits, unless otherwise permitted by an ALJ or the Board. B.R. 102(D)(1)(b); B.R. 200(b)(3).

iii. Briefs and Exhibits

Practically speaking, any motion or objection filed with an ALJ should be accompanied by a brief and all exhibits relied upon in the brief. At a minimum, the movant’s brief should cite all relevant Code Sections and/or Board Rules the movant relies upon in requesting relief, the facts or documentary evidence upon which the movant relies, and an analysis of why the particular relief sought is appropriate under the circumstances. A practitioner should ensure that all facts relied upon in the brief are supported by

authenticated and admissible documentary or testimonial evidence. This may require the use of a deposition transcript or an affidavit to lay a proper foundation for certain facts or documents.

A change in physician/additional medical treatment motion filed utilizing Form WC-200b also requires that the motion or objection set forth reasons why the requested change will or will not benefit the employee or provide the employee with medical care reasonably required to effect a cure, give relief, or restore the employee to suitable employment. *See* B.R. 200(b)(2). Factors which may be considered in support of the request or objection include, but are not limited to:

- (i) Proximity of physician's office to employee's residence;
- (ii) Availability of physician to employee;
- (iii) Excessive/redundant performance of medical procedures;
- (iv) Necessity for specialized medical care;
- (v) Language barrier;
- (vi) Referral by authorized physician;
- (vii) Noncompliance of physician with Board Rules and procedures;
- (viii) Panel of physicians;
- (ix) Duration of treatment without appreciable improvement;
- (x) Number of prior treating physicians;
- (xi) Prior requests for change of physician/treatment;
- (xii) Employee released to normal duty work by current authorized treating physician;
- (xiii) Current physician indicates nothing more to offer.

B.R. 200(b)(2) (2018).

The brief in support of or objecting to the motion should attempt to address as many of these factors as applicable, as well as any other factors relevant to the relief being sought or being opposed.

A commonly filed motion is a motion filed by the employee to recommence the employee's temporary disability benefits on an interlocutory basis pending a hearing. Such a motion is necessary when the employee possesses evidence showing that an employee's income benefits have been unilaterally suspended on improper grounds or that an employer/insurer has failed to recommence benefits in keeping with the Act and Board Rules.

Pursuant to Board Rule 102(D)(5), an ALJ may issue an interlocutory order suspending or reinstating payment of weekly benefits to an employee pending an evidentiary hearing. As such, a motion to recommence benefits is a request for interlocutory relief and should only be filed after a hearing request has been made via the filing of a Form WC-14 Request for Hearing. Prior to filing this interlocutory motion, counsel for the employee should make a good faith effort to resolve the outstanding issue with opposing counsel or the employer/insurer.

A motion to recommence weekly benefits should be filed using a Form WC-102(D). Likewise, an objection should be filed using the same Form WC-102(D). Counsel for the employee, in preparing a brief in support of this motion, should include the following assertions and supporting evidence for the ALJ's consideration:

- (1) Authority pursuant to which relief is being sought (Board Rule 102(D));
- (2) Copies of work status reports and/or medical records from the ATP evidencing the employee's work restrictions at the time of suspension of benefits (or copies of evidence relied upon by employer/insurer to improperly suspend benefits); and
- (3) Evidence that benefits have indeed been suspended (i.e., copy of WC-2 suspending benefits, affidavit from employee stating benefits were stopped as of a certain date, etc.).

C. Objecting to the Motion

Board Rule 102(D)(3) states, "Any party objecting to a motion shall respond on a Form WC-102D, which must be filed with the Board within 15 days of the date of the certificate of service on the request, and shall serve a copy on all counsel and unrepresented parties." B.R. 102 (2018). The same fifteen (15) day response time applies to Form WC-200b motions. B.R. 200(b)(1). No response time is articulated in the Board Rules as it relates to motions for reconsideration.

D. Notifying Court When Issues Resolve Pending Adjudication of Motion

Board Rule 102(D)(4) states:

Whenever the pending issues resolve in whole or in part, or at any time that a ruling on the motion is no longer necessary or desired, the parties or attorneys shall immediately notify the Board or assigned Administrative Law Judge: (1) first, by telephone call; and (2) if so instructed, by subsequent written or electronic confirmation. Any party or attorney who fails to follow this procedure, and who is unable to show good cause for such failure, may be subject to civil penalties and/or assessed attorney's fees.

B.R. 102(D)(4) (2018).

**GEORGIA STATE BOARD OF WORKERS' COMPENSATION
WC-102D MOTION /OBJECTION TO MOTION**

Claim No. : ██████████
 SSN : ██████████
 County Of Injury : DOUGHERTY
 ALJ : Zeese, Gordon

Claimant : ██████████
 Date of Injury : 01/07/2013
 Claim Status : Open
 Catastrophic : No

Parties to Claim / Identifying Information				
Employer	Insurer	Claims Office	Employer Attorney	Insurer Attorney
HEALTH DISTRIBUTION INC	██████████ COMPANY	██████████ COMPANY		WILLIAM J RAWLS II (Both)
Claimant Attorney (s)	Rehabilitation Supplier Name	Other Parties	Other Parties Attorney	
██████████				

Motion/Objection To Motion (Form WC-102D)		
When you receive this completed form, you may file a response with the Board within fifteen (15) days of the date of the certificate of service (O.C.G.A. § 9-11-6(e)). All responses should be filed on Form WC-102d		
Type : <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Objection to Motion		
B. Action Requested		
MOTION Submitted By:	<input type="checkbox"/> Claimant <input checked="" type="checkbox"/> Employer <input type="checkbox"/> Other Party	
Purpose:	Compel	
OBJECTION Submitted By:	<input type="checkbox"/> Claimant <input type="checkbox"/> Employer <input type="checkbox"/> Other Party	
Purpose :		
Documents Attached		
#	DocID	Document Name
1	15743704	Employer/Insurer's Motion to Compel and Brief in Support
C: Entry of Appearance		
[X] I hereby Certify to the existence of a Valid Fee Contract in compliance of Board Rule 108 or a Form WC 102 filed in compliance with Board Rule 102(fee contract or form WC 102B has been previously filed or is attached.		
D. Certificate of Service		
[X] I hereby Certify that the parties have made a good faith effort to reach agreement on this issue, but have failed to do so to date. I further certify that I have this day sent a copy of this information with supporting documents to all parties and counsel in this claim.		
Submitter Details		
Filing Party :	WILLIAM J RAWLS II	
Submitter Name :	Rawls William	
Signature Indicator :	Yes	
Date :	03/16/2015	

Phone :	404-256-0700	Extn:	
Email :	JRAWLS@MFLAW.COM		
IF YOU HAVE QUESTIONS PLEASE CONTACT THE STATE BOARD OF WORKER'S COMPENSATION AT 404-656-3818 OR 1-800-533-0682 OR VISIT http://www.sbwg.georgia.gov Willfully making a false statement for the purpose of obtaining or denying benefits is a crime subject to penalties of up to \$10,000.00 per violation (O.C.G.A. §34-9-18 and 34-9-19). This form was electronically submitted via ICMS.			

returns, schedules, etc., for the last five years far outweigh whatever de minimis relevancy which the Employer/Insurer may attempt to articulate.

(Aff. Of William J. Rawls, II ¶14, Exhibit 1 thereto.)

During the discovery phase of this matter, Claimant has disclosed that she received compensation from October 2012 through January 2013 from a school grant for "sitting on the [REDACTED]" (Aff. Of William J. Rawls, II ¶6.) On October 24, 2014, counsel for Employer/Insurer mailed a letter to Claimant's attorney requesting that Claimant produce the requested income tax information for 2013 and warning of Employer/Insurer's intention to file a motion to compel if such responses are not served upon Employer/Insurer. (Aff. of William J. Rawls, II, ¶7, Exhibit 3 thereto.) On October 29, 2014, Opposing Counsel advised that Claimant was not required and therefore did not file a 2013 income tax return. (Aff. of William J. Rawls, II, ¶8.) However, after discussing with Opposing Counsel whether or not Claimant and her husband filed a joint tax return for 2013, on January 2, 2015, Opposing Counsel produced a 2013 1099, and advised that he was researching the filing of a joint return for 2013. (Aff. of William J. Rawls, II, ¶9.) Further, on January 5, 2015, Opposing Counsel advised that Claimant would deliver the 2013 income tax return to him the following day. (Aff. of William J. Rawls, II, ¶10.) However, Claimant has, to this date, failed to produce copies of her 2013 income tax records. (Aff. of William J. Rawls, II, ¶ .)

ARGUMENT AND CITATION OF AUTHORITY

Employer/Insurer's motion to compel should be granted because Claimant has

Mozley, Finlayson
& Loggins LLP
A Limited Liability Partnership
One Premier Plaza
Suite 900
5605 Glenridge Drive
Atlanta, Georgia 30342

failed to provide the requested income tax records despite attempts by Employer/Insurer's counsel to secure such documents.

A. Rule 6.4

O.C.G.A. §9-11-37 allows a party to apply for an order compelling discovery responses. Pursuant to Rule 6.4 of the Georgia Uniform Superior Court Rules, attached to the contemporaneously-filed Motion to Compel is the certificate signed by counsel for Employer/Insurer, William J. Rawls, II, certifying that he has conferred with the Claimant's counsel in a good faith effort to resolve this discovery dispute. Unfortunately, the parties have been unable to agree on a resolution of the discovery issue and this motion to compel has been necessitated.

B. Claimant's Income Tax Records

O.C.G.A. 9-11-26(b)(1) provides that "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. ... It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence...." The courts have discretion in determining the discoverability of a party's income tax returns. McKinnon et al. v. Smock, 209 Ga. App. 647 (1993).

Claimant has claimed entitlement to and is seeking income indemnify benefits from Employer/Insurer as a result of the subject incident. The court in McKinnon et al. v. Smock, noted that "income tax returns are not 'automatically discoverable upon a de minimus showing of relevancy'". Id at 648. However, the court held that because the plaintiff in that case sought lost wages as an element of his damages, the "trial court did

not abuse its discretion by allowing discovery of the requested income tax returns." Id. The court reasoned that a sufficient showing of relevancy was made by the defendants in seeking the tax returns for a period of 4 years preceding the date of the loss and 1 year following the loss because such income tax returns "offer evidence of what plaintiff's income was for a few years before his injury, whether it fluctuated during that period and whether his income changed after his injury". Id. at 648, 649.

Request for production no. 8 requests Claimant's tax records, including tax returns, for the last five (5) years. However, Employer/Insurer is now only asking for Claimant's tax records for the year 2013, which it appears Claimant has now agreed to provide. Claimant is seeking to receive income indemnity benefits, claiming that she is not currently working and has not been working since the subject incident. Employer/Insurer seeks to determine Claimant's employment and income status for 2013 to properly evaluate this matter. Claimant's income tax returns will offer such proof of employment or unemployment. Claimant's tax returns, showing any employment since the subject incident, are directly relevant to her claim for income indemnity benefits and are therefore, pursuant to McKinnon et al. v. Smock, discoverable.

WHEREFORE, pursuant to O.C.G.A. § 9-11-37 (d)(1), Employer/Insurer respectfully requests that this Court grant the Motion to Compel the production of all tax records and returns filed by the Claimant during the tax year 2013.

IN THE STATE BOARD OF WORKERS' COMPENSATION
STATE OF GEORGIA

Angela Wilborn,)	
)	
Employee/Claimant,)	SBWC Claim No. 2013-002573
)	
)	D/A: 01/07/2013
)	
Health Distribution, Inc.)	
d/b/a Amicita Home Health,)	
and Amerisure Insurance)	
Company,)	
)	
Employer/Insurer.)	

CERTIFICATION OF WILLIAM J. RAWLS II

Counsel for Employer/Insurer has in good faith conferred with Claimant's counsel in an effort to resolve this discovery dispute without court action by writing to Claimant's counsel requesting that Claimant respond to Document Request No. 8. However, my endeavors have not been successful in resolving this discovery dispute.

This 16th day of March, 2015.


WILLIAM J. RAWLS II
Georgia State Bar No. 596090

Mozley, Finlayson
& Loggins LLP
A Limited Liability Partnership
One Premier Plaza
Suite 900
5605 Glenridge Drive
Atlanta, Georgia 30342

IN THE STATE BOARD OF WORKERS' COMPENSATION
STATE OF GEORGIA

Angela Wilborn,)	
)	
Employee/Claimant,)	SBWC Claim No. 2013-002573
)	
)	D/A: 01/07/2013
)	
Health Distribution, Inc.)	
d/b/a Amicita Home Health,)	
and Amerisure Insurance)	
Company,)	
)	
Employer/Insurer.)	

AFFIDAVIT OF WILLIAM J. RAWLS II

STATE OF GEORGIA

COUNTY OF FULTON

Before the undersigned, an officer duly authorized by law to administer oaths, personally appeared William J. Rawls II who, on oath, deposes and states as follows:

1.

I am more than 21 years of age and am competent to testify to the matters contained herein. This affidavit is made upon my personal knowledge to be submitted to the court in connection with Employer/Insurer's Motion to Compel production of documents and for all purposes allowed by law.

2.

I am a member in good standing of the State Bar of Georgia. I am counsel of record for Employer/Insurer in this matter.

3.

On January 22, 2014, Employer/Insurer served Claimant with the pleading

Mozley, Finlayson
& Loggins LLP
A Limited Liability Partnership
One Premier Plaza
Suite 900
5605 Glenridge Drive
Atlanta, Georgia 30342

entitled "Employer/Insurer's Request for Production of Documents to Claimant." (See Exhibit 1 hereto.)

4.

Claimant served her responses and objections on or about March 7, 2014. (See Exhibit 2 hereto.)

5.

Claimant objected to the production of her income tax records and returns.

6.

During the discovery phase of this matter, Claimant has disclosed that she received compensation from October 2012 through January 2013 from a school grant for "sitting on the Board of the Randolph County School System."

7.

On October 24, 2014, I mailed a letter to Claimant's attorney requesting that Claimant produce the requested income tax information for 2013 and warning of Employer/Insurer's intention to file a motion to compel if such responses are not served upon Employer/Insurer. (See Exhibit 3 hereto.)

8.

On October 29, 2014, Opposing Counsel advised that Claimant was not required and therefore did not file a 2013 income tax return.

9.

After discussing with Opposing Counsel whether or not Claimant and her husband filed a joint tax return for 2013, on January 2, 2015, Opposing Counsel produced a 2013 1099, and advised that he was researching the filing of a joint return

for 2013.

10.

On January 5, 2015, Opposing Counsel advised that Claimant would deliver the 2013 income tax return to him the following day.

11.

Claimant has, to this date, failed to produce copies of her 2013 income tax records.

12.

Pursuant to Uniform State Court Rule 6.4(B), I hereby certify that I, on behalf of Employer/Insurer, have attempted to resolve this discovery dispute without Court action.

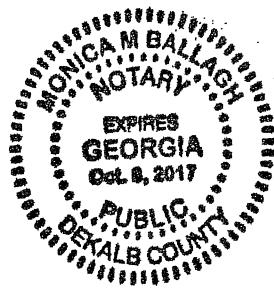
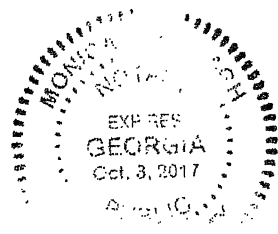
FURTHER AFFIANT SAYETH NOT.



WILLIAM J. RAWLS II
Georgia Bar No. 596090

Sworn to and subscribed before me
this 16 day of March, 2015.

Notary Public
My Commission Expires: 10-8-17



Mozley, Finlayson
& Loggins LLP
A Limited Liability Partnership
One Premier Plaza
Suite 900
5605 Glenridge Drive
Atlanta, Georgia 30342

IN THE STATE BOARD OF WORKERS'

COMPENSATION

[REDACTED])
Employee/Claimant,)
v.) SBWC Claim No. [REDACTED]
[REDACTED])
Employer/Insurer.) D/A: [REDACTED]

MOTION FOR ORDER REQUIRING THE CLAIMANT TO COOPERATE WITH MEDICAL TREATMENT

COME NOW [REDACTED]

Employer and Insurer, and hereby submit this brief in support of its Motion for Order Requiring Claimant to Cooperate with Medical Treatment, and show this Honorable Board as follows:

I. STATEMENT OF FACTS

Claimant suffered an injury to his back and legs. [REDACTED] with [REDACTED] in Lawrenceville, Georgia is the authorized treating physician. Claimant apparently was last seen by [REDACTED] in March [REDACTED].

Claimant is also treating for [REDACTED]. He is being treated by [REDACTED]. (D1). Claimant has missed several appointments due. Claimant is receiving income benefits.

Based on the claimant's repeated failures to attend medical care, it is respectfully requested that an order be entered compelling the claimant to cooperate with medical treatment by [REDACTED] and should he fail to cooperate, that his benefits might be suspended by the Employer/Insurer.

II. ARGUMENT AND CITATIONS OF AUTHORITY

O.C.G.A. § 34-9-200(c) provides in part:

...As long as any employee is receiving compensation, he or she shall submit himself or herself to examination by the authorized treating physician at reasonable times. If the employee refuses to submit himself or herself to or in any way obstruct such an examination requested by and provided for by the employer, upon order of the Board his or her right to compensation shall be suspended until such refusal or objection ceases and no compensation shall at any time be payable for the period of suspension unless in the opinion of the Board, the circumstances justify the refusal or obstruction.

Claimant is under treatment by [REDACTED] an authorized treating physician.

He is, in fact, receiving income indemnity benefits. While he receives these benefits at the current rate, he must cooperate with medical. The follow up treatment with [REDACTED] [REDACTED] is not intrusive, nor does a follow up appointment require the claimant undergo any unwanted, invasive procedures. More specifically, follow up appointments with [REDACTED] [REDACTED] will allow [REDACTED] to evaluate the claimant's current condition, evaluate the claimant's ability to return to work and provide remedial treatment as necessary. As such, the return visit to [REDACTED] is reasonably necessary to affect a cure, give relief and restore the claimant to suitable employment. Additionally, employer/insurer will provide transportation if necessary.

III. CONCLUSION

The claimant does have an authorized treating physician. The claimant has willfully failed to return to his current authorized treating physician, even though the physician has provided appropriate treatment.

WHEREAS, the employer/insurer respectfully requests that an order be entered requiring the claimant to comply with medical treatment in the form of a return visit to [REDACTED] [REDACTED] and that if the claimant fails to attend the properly scheduled visit, then

the employer/insurer have the right to suspend the claimant's benefits pending his return to cooperation with medical treatment.

This ____ day of March, [REDACTED]

WILLIAM J. RAWLS, II
Georgia State Bar No. [REDACTED]

Attorney for Employer/Insurer

MOZLEY, FINLAYSON & LOGGINS LLP
One Premier Plaza, Suite 900
5605 Glenridge Drive
Atlanta, Georgia 30342
(404) 256-0700
#269890

CERTIFICATE OF SERVICE

I certify I have this date served upon the following parties a true and correct copy of the foregoing MOTION FOR ORDER REQUIRING CLAIMANT TO COOPERATE WITH MEDICAL TREATMENT by placing same in the United States Mail in an envelope with sufficient postage affixed thereto and addressed as follows:



This the _____ day of August, [REDACTED]

WILLIAM J. RAWLS, II

**IN THE STATE BOARD OF WORKERS' COMPENSATION
STATE OF GEORGIA**

)	
Employee/Claimant,)	
v.)	
)	SBWC Claim No.:
)	
Employer,)	DOI:
and)	
)	
)	
Insurer.)	

**MOTION FOR INTERLOCUTORY ORDER RECOMMENCING CLAIMANT'S
INCOME BENEFITS**

COMES NOW, _____, Employee/Claimant in the above-styled administrative action pending before this Honorable Court, and pursuant to the Workers' Compensation Act, O.C.G.A. § 34-9-1, et. seq. and Board Rule 102(D) _____, and hereby files his Motion for Interlocutory Order Recommencing Income Benefits pending an evidentiary hearing, showing this Honorable Court the following:

1.

Employee/Claimant suffered an electrical shock injury arising out of and in the course of his employment with the Employer on _____.

2.

Employer/Insurer accepted this claim as compensable and temporary total disability benefits in the amount of \$ _____ per week were commenced for () weeks.

3.

The parties agreed to _____ of _____ in _____, Georgia, as Claimant's authorized treating physician. (Exhibit A, Correspondence Reflecting Selection of Dr. _____ from Panel of Physicians).

4.

On or around _____, Claimant was taken completely out of work by Dr. _____'s office.

5.

Dr. _____'s office referred Claimant for orthopedic treatment with Dr. _____ at _____ Orthopedic Associates.

6.

Dr. _____'s office also referred Claimant for a psychiatric consult, which has been controverted by the Employer/Insurer. (See Form WC-PMT (Controvert), dated _____).

7.

Claimant has not been returned to work in any capacity by Dr. _____.

8.

On _____, Dr. _____, the referral doctor, released Claimant from his care and stated Claimant could return to full duty work. (Exhibit B, Release from Dr. _____ dated _____).

9.

The Employer/Insurer unilaterally suspended Claimant's income benefits based upon Dr. _____'s work release. (Exhibit C, WC-2 Suspending Benefits, dated _____).

10.

Dr. _____ is not the authorized treating physician selected by the Claimant from the panel of physicians; instead, Claimant was sent to Dr. _____ upon referral from Dr. _____'s office.

11.

Here, the Employer/Insurer has unilaterally suspended Claimant's benefits while Claimant is still under work restrictions and while the Employer/Insurer has not proven that Claimant has undergone a change in condition for the better.

12.

The Claimant is experiencing financial hardship and will experience extreme difficulty in meeting his financial obligations if he is forced to wait until a hearing to prove his entitlement to ongoing temporary total disability benefits.

13.

Board Rule 102(D) allows the ALJ to issue an interlocutory order reinstating weekly income benefits pending a hearing. The Claimant respectfully requests that this Honorable Court, in the interest of justice, issue an interlocutory order reinstating Claimant's TTD benefits, pending a hearing in this case.

Conclusion

For the foregoing reasons, Claimant respectfully requests that this Honorable Court enter an interlocutory order reinstating Claimant's TTD benefits, pending a hearing in this case.

This day of _____, _____.

Georgia Bar No.:
Attorney for Employee/Claimant

CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the within and foregoing *Claimant's Motion for Interlocutory Order Recommencing Income Benefits* upon the following individuals by electronic mail and by depositing the same in the United States Mail, First Class, postage prepaid, and properly addressed to ensure delivery to:

This day of , .

Georgia Bar No.
Attorney for Employee/Claimant

Josh Carroll

From:
Sent:
To: Josh Carroll
Cc:
Subject: RE: - Form WC-PMT Filing w/ Attachments

Is this from an authorized treating physician?

Also I am aware that there is a conference call tomorrow regarding this matter..

Please see email between me and you agreeing to a Dr. for treatment. The ATP is Dr. NOT He has not ordered a psych eval nor has there been mention of this since he started treating with him. Furthermore there was no supporting documentation regarding the reason for psych eval... Do you have the dictation? We never received it.

I have now assigned to represent

She has been copied on this email.

Please see email below between you and I agreeing with Dr.

From c/a .. will agree to treat with panel dr without agreeing that panel is valid.
From: Josh Carroll [mailto:JCarroll@bgwlaw.com]
Sent:
To:
Cc:

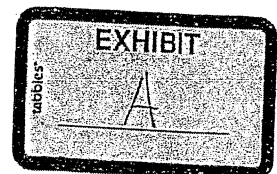
Subject: RE: URGENT -

Ms. :

Without agreeing that the panel is valid, Mr. will agree to be examined by Dr. from the panel. How soon could Mr. get in to see Dr. ? The website for indicates it has a walk-in clinic. Can you call to authorize a visit today?

Joshua A. Carroll
Attorney at Law
BUZZELL, GRAHAM & WELSH, LLP
200 Third Street
P.O. Box 1017
Macon, Georgia 31202-1017
Phone: (478) 742-8820
Fax: (478) 742-3088
Cell: (706) 713-0752
jcarroll@bgwlaw.com
www.bgwlaw.com

From:
Sent:



To: Josh Carroll <JCarroll@bgwlaw.com>
Cc:

Subject: RE: URGENT -

We take the standpoint that the panel is Valid.

I think at this point it is more important to get him treated than to argue over this. Do you agree. In the meantime who would he like to treat with ON the panel.

From: Josh Carroll [mailto:JCarroll@bgwlaw.com]
Sent:
To:
Cc:
Subject: - Form WC-PMT Filing w/ Attachments

Ms. :

Please find attached a Form WC-PMT, with supporting documentation, seeking approval of Mr. 's psychological referral by the ATP's office.

Thank you.

Joshua A. Carroll
Attorney at Law
BUZZELL, GRAHAM & WELSH, LLP
200 Third Street
P.O. Box 1017
Macon, Georgia 31202-1017
Phone: (478) 742-8820
Fax: (478) 742-3088
Cell: (706) 713-0752
jcarroll@bgwlaw.com
www.bgwlaw.com

 ((FAX ALERT)) 

TODAYS DATE:

ATTENTION:

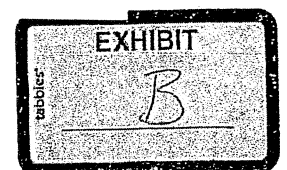
FAX #:

REFERRING:

CLAIM #

FROM:

PAGES SENT (INCLUDING COVER SHEET) 10



Date:
RE: , DOB: I

Work Status: Return to full duty, without restrictions.

MMI has been reached.

0% as per American Medical Association: "Guide to the Evaluation of Permanent Impairment", Fifth Edition.

Electronically Signed by

Encounter Summary - Progress Note
Date Printed:

Patient	
DOB	

Patient Demographics:

Address		Home Phone	
		Work Phone	

Encounter Notes:

Encounter Reason/Date	MRI REVIEW - LEFT SHOULDER.												
History of Present Illness	<p>F/U</p> <p>Reported by patient.</p> <p>Athletics: no participation</p> <p>How are you feeling? same</p> <p>Previous PT: did not help</p> <p>Previous Injections: none</p> <p>Change in symptoms: no</p> <p>Do you need a work excuse? yes</p> <p>MRI Review - Left Shoulder</p>												
Review of Systems	<p>Constitutional: Constitutional: no fever or night sweats.</p> <p>Respiratory: Respiratory: no cough.</p> <p>Musculoskeletal: Musculoskeletal: muscle weakness and arthralgia/joint pain.</p> <p>Integumentary: Skin: no rashes.</p> <p>Neurologic: Neurologic: no numbness and weakness.</p> <p>Hematologic/Lymphatic: Hematologic/Lymphatic no swollen glands.</p> <p>Allergic/Immunologic: Allergy/Immunologic: no hives.</p>												
Vitals	<table border="1"> <tr> <td>Ht:</td> <td></td> <td>Wt:</td> <td></td> <td>BMI:</td> <td></td> </tr> <tr> <td>Pain Scale:</td> <td>7</td> <td></td> <td></td> <td></td> <td></td> </tr> </table>	Ht:		Wt:		BMI:		Pain Scale:	7				
Ht:		Wt:		BMI:									
Pain Scale:	7												
Results/Interpretations	None recorded												
Physical Exam	<p>Patient is a -year-old male.</p> <p>Constitutional: General Appearance: healthy-appearing, NAD, and normal body habitus.</p> <p>Psychiatric: Orientation: oriented to time, place, and person. Mood and Affect: normal mood and affect and active and alert.</p> <p>Cardiovascular System: Arterial Pulses Right: radial normal and brachial normal. Arterial Pulses Left: radial normal and brachial normal. Varicosities Right: capillary refill test normal. Varicoalities</p>												

Encounter Summary - Progress Note

Left: capillary refill test normal.

C-Spine/Neck: Active Range of Motion: no pain elicited on motion.

Shoulders: Inspection Right: no misalignment, atrophy, or swelling. Inspection Left: no misalignment, atrophy, or swelling. Bony Palpation Right: no tenderness of the clavicle, the acromioclavicular joint, the greater tuberosity, or the bicipital groove. Bony Palpation Left: no tenderness of the clavicle, the acromioclavicular joint, the greater tuberosity, or the bicipital groove. Soft Tissue Palpation Right: no tenderness of the supraspinatus, the infraspinatus, the teres minor, the glenohumeral joint region, the deltoid, or the lateral cuff insertion. Soft Tissue Palpation Left: no tenderness of the supraspinatus, the infraspinatus, the teres minor, the glenohumeral joint region, the deltoid, or the lateral cuff insertion. Active Range of Motion Right: normal. Active Range of Motion Left: normal. Passive Range of Motion Right: normal. Passive Range of Motion Left: normal. Special Tests Right: Hawkins's test negative, Neer's test negative, O'Brien's test negative, Speed's test negative, empty can sign negative, subacromiars strength tests normal, anterior slide test negative, and Yergason's test negative. Special Tests Left: Hawkins's test negative, Neer's test negative, O'Brien's test negative, Speed's test negative, empty can sign negative, subacromiars strength tests normal, anterior slide test negative, and Yergason's test negative. Stability Right: no dislocation or laxity; anterior relocation test negative, apprehension test negative, and load and shift test negative; and posterior apprehension test negative and load and shift test negative. Stability Left: no dislocation or laxity; anterior relocation test negative, apprehension test negative, and load and shift test negative; and posterior apprehension test negative and load and shift test negative. Strength Right: external rotation at 0 deg. of abduction 5/5 and 90 deg. of abduction 5/5 and abduction 5/5, adduction 5/5, flexion 5/5, extension 5/5, internal rotation 5/5, and scapular elevation 5/5. Strength Left: external rotation at 0 deg. of abduction 5/5 and 90 deg. of abduction 5/5 and abduction 5/5, adduction 5/5, flexion 5/5, extension 5/5, internal rotation 5/5, and scapular elevation 5/5.

Skin: Right Upper Extremity: normal. Left Upper Extremity: normal.

Neurological System: Biceps Reflex Right: normal (2). Biceps Reflex Left: normal (2). Brachioradialis Reflex Right: normal (2). Brachioradialis Reflex Left: normal (2). Triceps Reflex Right: normal (2). Triceps Reflex Left: normal (2). Sensation on the Right: C5 normal, C6 normal, C7 normal, C8 normal, T1 normal, and T2 normal. Sensation on the Left: C5 normal, C6 normal, C7 normal, C8 normal, T1 normal, and T2 normal.

Assessment and Plan

Assessment: Left Arm Pain

Assessment II: Brachial Plexus Disorder with sensory neuropathy

Patient returns to review the results of his MRI. He states his symptoms remain consistent with his previous visit. He continues to have complications with dropping objects. He reports compliance with completion of formal physical therapy and home exercises and denies any improvement. Patient presents with no protective coverings or assisting devices.

MRI obtained on _____ at _____ reveals, no acute abnormality demonstrated.

Upon clinical examination, patient demonstrates range of motion of the shoulder elbow and wrist he does have 5 out of 5 strength when testing bilaterally when testing unilaterally strength drops down objective demonstration of some distractibility during the clinical exam. The patient has symmetric reflexes in biceps triceps wrist flexion wrist extension.

At this time, treatment options were discussed with the patient he reports no help with physical therapy starting his therapy sessions have been very painful when it comes to range of motion is only been able to do heating numerous modalities for this reason I recommend cessation of physical therapy transition to a home exercise program and completely gentle range of motion exercises on his own. Multiple clinical examinations been unable to correlate specific objective imaging or specialized testing any S's particular side we've had some different locations of maximal pain beginning with the left arm transitioning her left axilla and today in the back and the pneumatic. I discussed with him I see no objective signs injury and raising did not have any

Encounter Summary - Progress Note
Date Printed:

recommendation for surgical intervention at this time. Follow-up when necessary basis.

Work Status: Return to full duty, without restrictions.

MMI has been reached.

0% as per American Medical Association: "Guide to the Evaluation of Permanent Impairment", Fifth Edition.

1. Brachial plexus disorder

G54.0: Brachial plexus disorders

2. Sensory neuropathy

G60.8: Other hereditary and idiopathic neuropathies

• Terozin (with lidocaine) 2.5 %-25 %-0.025 %-10 % lotion -

Apply 2 mL 4 times a day by topical route. Qty: 1 120 mL bottle(s) Refills: 0

Pharmacy:

3. Shoulder pain - Left

M25.512: Pain in left shoulder

4. Worker in work-related accident

Z57.8: Occupational exposure to other risk factors

Return to Office

None recorded

Encounter Summary - Progress Note
Date Printed:

Electronically Signed by:

GEORGIA STATE BOARD OF WORKERS' COMPENSATION

A. OUTLINE OF BENEFITS OTHER THAN MEDICAL EXPENSE

In addition to paying your medical expenses for an injury at work, the employer will pay you for part of your lost wages if you are disabled from work for more than seven (7) calendar days because of your work-related injury.

TEMPORARY TOTAL

O.C.G.A. §34-9-261: IF YOU ARE NOT ABLE TO WORK AT ALL because of your injury, your employer/insurer must pay:

- 2/3 of your average weekly wage with a maximum of \$550 per week if your date of accident was on or after July 1, 2015, and a maximum of \$575 per week if your date of accident was on or after July 1, 2016.
- A minimum of \$50.00 per week, or your actual weekly wage if less than \$50.00 per week. If your accident occurred on or after July 1, 1992, and if your injury is not catastrophic, you are not entitled to this type of benefit for more than 400 weeks. Furthermore, your benefits may be reduced to those allowed by O.C.G.A. §34-9-262 under certain circumstances after you have been released to return to work with limitations or restrictions.

TEMPORARY PARTIAL

O.C.G.A. §34-9-262: IF YOU MUST WORK FOR LOWER WAGES because of your injury at work, your employer/insurer will pay:

- 2/3 of your wage loss (the difference between what you make after your injury and what you made before), with a maximum of \$367 per week if your date of accident was on or after July 1, 2015, and a maximum of \$383 per week if your date of accident was on or after July 1, 2016 for a maximum of 350 weeks from the date of accident.

PERMANENT PARTIAL

O.C.G.A. §34-9-263: IF YOU LOST A PART OR MEMBER OF YOUR BODY or lose the use of a member (such as arm, finger, eye, etc.), you will first receive benefits described above during disability, and then upon return to work or otherwise becoming ineligible for TTD or TPD benefits, you will receive payment for permanent partial disability for a certain number of weeks, based on the percentage of your loss. Multiply the permanent partial disability (%) by the maximum number of weeks listed below to determine the number of weeks you will receive PPD benefits. For example, for a 15% permanent partial disability to an arm, multiply 15% times 225 weeks. The answer of 33.75 represents the number of weeks you will receive income benefits.

<u>Bodily Loss</u>	<u>Maximum Weeks</u>
Arm.....	225
Leg.....	225
Hand.....	160
Foot.....	135
Thumb.....	60
Index Finger.....	40
Middle Finger.....	35
Ring Finger.....	30
Little Finger.....	25
Great Toe.....	30
Any toe other than great toe.....	20
Loss of hearing, traumatic	
One ear.....	75
Both ears.....	150
Loss of vision of one eye.....	150
Disability to the body as a whole.....	300

In all cases arising under the Workers' Compensation Law, any percentage of disability or bodily loss ratings shall be based upon Guides to the Evaluation of Permanent Impairment, Fifth Edition, published by the American Medical Association.

O.C.G.A. §34-9-220: The employer is not required to pay benefits for the first seven (7) calendar days you miss work because of your injury, unless you miss 21 consecutive days because of your injury.

O.C.G.A. §34-9-221: If income benefits are paid late, the employer/insurer will pay you a 15% penalty on all accrued benefits. If benefits are paid late after an award has been issued, the employer/insurer will pay you a 20% penalty.

B. RIGHT TO HEARING

If your benefits have been suspended and you believe that benefits were suspended incorrectly, you should request a hearing by sending Form WC-14 to the State Board of Workers' Compensation at the address below. If you need a Form WC-14, please contact the State Board of Workers' Compensation at the phone numbers listed below or visit the website.

STATE BOARD OF WORKERS' COMPENSATION
 270 PEACHTREE STREET, N.W.,
 ATLANTA, GEORGIA 30303-1299
 In Atlanta: 404-656-3818
 or: 1-800-533-0682
<http://www.sbwcc.georgia.gov>

IF YOU HAVE QUESTIONS PLEASE CONTACT THE STATE BOARD OF WORKERS' COMPENSATION AT 404-656-3818 OR 1-800-533-0682 OR VISIT <http://www.sbwcc.georgia.gov>
 WILLFULLY MAKING A FALSE STATEMENT FOR THE PURPOSE OF OBTAINING OR DENYING BENEFITS IS A CRIME SUBJECT TO PENALTIES OF UP TO \$10,000.00 PER VIOLATION (O.C.G.A. §34-9-10 AND §34-9-10).

3.

Employer/Insurer previously authorized medical treatment for the Claimant's hand with Dr. [REDACTED], and treatment for the low back with Dr. [REDACTED].

4.

On [REDACTED], Dr. [REDACTED] recommended that the Claimant undergo a lumbar MRI to determine the cause of her continued complaints of low back pain. (Claimant's Exhibit "A," attached hereto).

5.

The Employer/Insurer has refused to authorize this diagnostic testing recommended by the authorized treating physician, [REDACTED].

6.

Pursuant to O.C.G.A. § 34-9-200(a)(2), the Employer shall furnish the employee such medical care and other treatment and services, as prescribed by a licensed physician, which the State Board of Workers' Compensation deems reasonably required and appear likely to effect a cure, give relief, or restore the employee to suitable employment.

7.

The MRI recommended by Dr. [REDACTED] is required to determine if there is an objective finding to correlate with the Claimant's continued complaints of low back pain. In Dr. [REDACTED]'s [REDACTED], [REDACTED] addendum to his [REDACTED] visit note, he states, "I would like to get a new MRI to compare with her old MRI to see if there has (sic) been any changes, because the patient continues to describe worsening pain." (Ex. "A," p. 4). This diagnostic tool is essential for the authorized treating physician to be able to determine what, if any, medical treatment is necessary to restore the employee to suitable employment.

WHEREFORE, the Claimant respectfully requests that this recommended diagnostic test be ordered by the State Board of Workers' Compensation as necessary to restore the Claimant to suitable employment.

This _____ day of [REDACTED]

/s/ Joshua A. Carroll

JOSHUA A. CARROLL

Attorney for Employee/Claimant

Georgia Bar No.:

BUZZELL, GRAHAM & WELSH, LLP

200 Third Street

P. O. Box 1017

Macon, GA 31202-1017

Telephone: (478) 742-8820

Facsimile: (478) 742-3088

CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the within and foregoing *Claimant's Motion for Approval of Diagnostic Testing Requested by Authorized Treating Physician* upon the following counsel by email, and by First Class Mail, postage prepaid, and properly addressed to ensure delivery to:

[REDACTED]

This ____ day of [REDACTED]

/s/ Joshua A. Carroll

JOSHUA A. CARROLL
Attorney for Employee/Claimant
Georgia Bar No.:

BUZZELL, GRAHAM & WELSH, LLP
200 Third Street
P. O. Box 1017
Macon, GA 31202-1017
Telephone: (478) 742-8820
Facsimile: (478) 742-3088

WORK STATUS

Date of Exam _____ Is the injury work related? Yes No
 Patient Name _____ OG MR # _____
 Doctor _____
 Diagnosis Low back strain Right Left Bilateral

____ Should NOT return to work until re-evaluated (see return appointment date below).
 ____ Return to work WITHOUT restrictions on _____ (date).
 ____ Return to work WITH the following restrictions on _____ (date).
 Return to work no greater than _____ hours per day beginning on _____
 No lifting greater than _____ pounds.
 Right Left Both
 No prolonged bending, stooping, squatting, kneeling, or twisting.
 No pushing or pulling greater than _____ pounds.
 Right Left Both
 No prolonged reaching overhead or extreme positions of the neck.
 No lifting over _____ pounds over shoulder level, _____ pounds waist to shoulder,
 _____ pounds floor to waist
 No work involving use of hand / arm (*circle one*)
 Right Left Both
 Repetitive Strong Grip At all
 No working on or driving power moving equipment.
 Sit down work only.
 No standing / walking over _____ minutes / hour.
 No ladder / stair climbing.
 Avoid significant exposure to extreme temperature: _____ Hot _____ Cold _____ Both

see PCB

Is patient being prescribed medications that may be hazardous in a work environment? Yes No

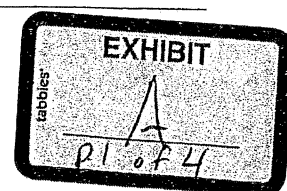
Additional modified duty restrictions/comments: See PCB

____ Patient to continue physical / occupational therapy.
 ____ Patient released from physical / occupational therapy.
 Return appointment with doctor on pondit hall mri (appointment date)

Physician Signature _____ Date _____

*Unless otherwise specified, restrictions are in effect until return appointment.

Estimated date of MMI _____



Encounter Summary

Last amended by _____, MD on _____

Amendment Sign-Off
Encounter signed-off by ' _____, MD,

Patient Name _____ Appt. Date/Time _____

DOB _____ Service Dept. _____

Provider _____

Insurance _____ Med Worker's Comp:
Policy/Group # : _____
Employer Name : _____
Case # : _____
Case Injury Date : _____

Chief Complaint

LOWER BACK

Vitals

Allergies

Patient's Care Team

Medications

Past Medical History

Surgical History

Family History

Ex A
p. 2 of 4

Social History

Reviewed Social History
Smoking Status: Never smoker.

Exercise level: Occasional.
Are you currently employed?: Y.
Employer:
Occupation:
Non-smoker.

Work related injury?: Y.

ROS

ROS as noted in the HPI

HPI

Lower Back

Reported by patient.

Location: bilateral; posterior

Quality: aching; constant; worsening

Duration: continuous since onset;

Timing: chronic

Context: fall; work injury

Alleviating Factors: lying down; heat

Aggravating Factors: lifting; twisting; bending/squatting

Associated Symptoms: no weakness; no numbness; no tingling; no swelling; no redness; no warmth; no ecchymosis; no catching/locking; no popping/clicking; no buckling; no grinding; no instability; no radiation down leg; no drainage; no fever; no chills; no weight loss; no change in bowel/bladder habits

Previous Surgery: none

Prior Imaging: x ray

Previous Injections: none

Previous PT: did not help

Work Related: yes

Working: modified duty; has had a functional capacity exam

Notes: continues to have midline lower back pain. Does not radiate described as a throbbing and aching pain. This occurred after a fall at work back in October.

Physical Exam

Patient is a -year-old female.

Constitutional: General Appearance: healthy-appearing, normal body habitus, and distress.

Psychiatric: Orientation: oriented to time, place, and person. Mood and Affect: active and alert, normal mood, and abnormal affect.

Gait and Station: Appearance: normal gait, no limp, and ambulating with no assistive devices.

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Lumbar Spine: Inspection: no ecchymosis or swelling and normal alignment. Bony Palpation of the Lumbar Spine: no tenderness of the spinous process. Bony Palpation of the Right Hip: no tenderness of the PSIS, the SI joint, or the greater trochanter. Bony Palpation of the Left Hip: no tenderness of the PSIS, the SI joint, or the greater trochanter. Soft Tissue Palpation on the Right: no tenderness of the paraspinal region or the iliolumbar region. Soft Tissue Palpation on the Left: no tenderness of the paraspinal region or the iliolumbar region. Active Range of Motion: pain with motion; worse with extension.

Assessment / Plan

female with midline axial back pain worse with extension. No positive nerve tension signs.

Plan

MRI to evaluate for internal derangement

Continue same work restrictions as her functional capacity exam

Addendum: I would like to get a new MRI to compare with her old MRI to see if there has been any changes, because the patient continues to describe worsening pain.

1. Facet joint pain

719.40: Pain in joint, site unspecified

2. Chronic low back pain

724.2: Lumbago

3. Low back pain

724.2: Lumbago

Discussion

Discussion Notes

1. I recommend cardiovascular exercising 5 days a week, maintaining an elevated heart rate for 30 minutes. This can be done with swimming, elliptical trainer or bicycle; which ever is best tolerated by patient.
2. Stretching lower back and hamstrings by bending forward and touch toes 20 minutes at a time 3 times a day. I showed patient how to do this in clinic.
3. Continue anti-inflammatories as needed, but not on a regular basis.

Return to Office

None recorded.

Encounter performed and documented by _____, MD
Encounter reviewed & signed by _____, MD on _____

Ex. A
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