

Oneida Tribal Judicial System

Onayote ʔ a-ka Tsiʔ Shakotiyaʔ Tolé hte

TRIAL COURT

Mike King,
Petitioner

Docket No. 12-TC-129

v.

HRD/Benefits and
Crawford & Co. Insurance
Respondents

ORDER Motion to Dismiss

This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers; Jean Webster, Mary Adams, and Leland Wigg-Ninham presiding.

The following matter came before the Oneida Tribal Judicial System for a hearing on the 30th day of October, 2012. The appearances were as follows: Petitioner: Mike King and Respondents: Christina Blue Bird/HRD – Benefits and Jack Fleming/Crawford & Company Insurance. Both parties appeared without counsel.

Background

On September 21, 2012 Petitioner filed a Hearing Application requesting an order for continuance until determination is made by a physician in regard to surgery and subsequent level of disability, and request the case remain open. Subsequently, Petitioner is seeking loss of personal day taken for surgery, timeline for possible reconstructive surgery, would like time for second opinion, if needed.

Issues

1. Should the court order the workers compensation claim remain open?
2. Is the Petitioner entitled to reinstatement of the personal hours taken for the day of his surgery?

Analysis

Findings of Fact

On May 6, 2011 Petitioner, whom is an elementary teacher at the Oneida Nation Elementary School fell into a rut on the school yard injuring his right knee.

On January 27, 2012 Petitioner underwent a right knee arthroscopy with Dr. William Enright.

On July 30, 2012 Dr. Enright determined the Petitioner has reached maximum medical improvement relative to his right knee and assigned the Petitioner with a 5% permanent partial disability (PPD) rating.

On August 24, 2012 Petitioner received a letter from Crawford Claims Management Services notifying the Petitioner the workers compensation indemnity benefits were discontinued effective June 21, 2012. Indemnity benefits were discontinued due to Dr. William Enright discharging the Petitioner from care.

On October 30, 2012 a pre-trial hearing was held. Petitioner is requesting: 1) the personal day, eight (8) hours, be reinstated; and 2) the case remain open to allow for Petitioner to seek a second opinion in the event the Petitioner would need reconstructive surgery.

On October 30, 2012 Respondent's testified the personal day used by the Petitioner cannot be reinstated per Worker's Compensation Law Section 13.6-4. Crawford Insurance argued the workers compensation indemnity benefits are being discontinued as Dr. Enright stated the Petitioner has reached maximum medical improvement and permanent partial disability of 5% is not entitled to compensation under the Worker's Compensation Law Section 13.6-10(h). Respondent also noted to the Petitioner if additional medical attention is required Petitioner does have a right to file a claim and if Petitioner seeks a provider from outside of the network, Petitioner may be responsible for 50% of the cost. In closing Respondent made a motion to have the case dismissed.

Conclusion of Law

Petitioner's request to have the case remain open for a second opinion or for possible further reconstructive surgery is denied. In the Worker's Compensation Law, Section 13.9.1 Permanent Disabilities states, "*Only percentages exceeding seven and one half percent (7-1/2%) will be deemed compensable.*" At the time Dr. Enright discharged the Petitioner, Dr. Enright stated the Petitioner had reached maximum medical improvement and assigned the Petitioner with 5% PPD, which is clearly below the 7-1/2%.

Petitioner's request for reinstatement of the eight (8) hours of personal time is denied. In the Worker's Compensation Law, Section 13.6-4 Waiting Period states, "*Compensation, other than payment of medical benefits, will be allowed for temporary disabilities beginning with the third day of disability.*"

DECISION

The Court grants the Respondents' motion to dismiss without prejudice.