



STATE BOARD OF WORKERS' COMPENSATION

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ORDER

The Employer/Insurer in the above-styled case filed a Motion seeking an Order removing this case from the active hearing calendar and additionally, to declare the Employee ineligible to receive compensation while refusing to provide a signed Board Form WC-207 to the Employer/Insurer.

The Employer/Insurer requested that the Employee sign a Board Form WC-207 to allow the Employer/Insurer to obtain medical records of the Employee. The Employee provided a signed form which was not Board Form WC-207 as furnished by the Board, but an authorization prepared by the Employee's attorney.

The Employee filed a timely objection to the Employer/Insurer's motion, alleging that the medical release provided by the Employee complies with the express requirements of O.C.G.A. §34-9-207.

While the Employee contends that O.C.G.A. §34-9-207 violates and is preempted by the Health Insurance Portability and Accountability Act, the Employee cites no authority to support his argument. Board Form WC-207 specifically cites 45 CFR 164.512(1) and provides,

The covered entity may disclose protected health information as authorized by and to the extent necessary to comply with laws relating to workers' compensation or other similar programs, established by law, that provides benefits for work-related illnesses without regard to fault.

WHEREFORE, in consideration of the Employer/Insurer's motion to remove the above-styled case from the hearing calendar and to declare the Employee ineligible to receive compensation during his period of refusal to execute a WC-207 and the Employee's objection, the Employer/Insurer's motion is granted. The release furnished by the Employee is not in compliance with O.C.G.A. §34-9-207 and the Health Insurance Portability and Accountability Act that allows release of medical records in workers' compensation cases.

Accordingly, the hearing set for October 5, 2010 is removed from the hearing calendar, not to be reset until such time as the Employee completes a properly signed WC-207 to each medical provider from whom he has received treatment for his on-the-job injury.

IT IS SO ORDERED, this the 10th day of September, 2010.

STATE BOARD OF WORKERS' COMPENSATION

This order is electronically signed and approved.

Larry Smith

ADMINISTRATIVE LAW JUDGE



STATE BOARD OF WORKERS' COMPENSATION

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This appeal by the Employee is before the Appellate Division for review of the order of Judge Smith, dated September 10, 2010. No cross-appeal was filed. This appeal was orally argued before the Appellate Division on December 7, 2010, and the parties filed briefs in support of their positions. After a review of the record as a whole, the Appellate Division now adopts the order of Judge Smith as its own.

ORDER

In the matter before us on review, the administrative law judge granted the Employer/Insurer's motion seeking an order removing this case from his active hearing calendar, and declaring the Employee ineligible to receive compensation while refusing to provide a signed Form WC-207 to the Employer/Insurer. In doing so, the administrative law judge specifically removed the then-set hearing from his hearing calendar, not to be reset until the Employee completes a properly executed Form WC-207 with respect to each provider from whom he has received treatment for his on-the-job injury.

On appeal, the Employee contends that the administrative law judge erred on multiple grounds in making his order. We disagree.

Implicit in his order, the administrative law judge found and concluded, as we have in the past and in accordance with applicable State and Federal law, that the Health Insurance Portability and Accountability Act ("HIPAA") and its corresponding regulations do not preempt O.C.G.A. § 34-9-207, such that Form WC-207 constitutes an appropriate form for the release of medical records, for workers' compensation purposes. *See, e.g.,* 45 C.F.R. § 164.512(l); *Baker v. Wellstar Health Systems, Inc.*, 2010 Ga. LEXIS 821 (November 1, 2010). We again note that O.C.G.A. § 34-9-207(a) provides for an employee's fairly broad waiver of any privilege or confidentiality concerning any communications related to his workers' compensation claim, or history or treatment of injury arising from the incident, that the employee has had with any physician. Such waiver applies to the employee's medical history with respect to any condition or complaint reasonably related to the condition for which he claims compensation. *See* O.C.G.A. § 34-9-207(a). Additionally, O.C.G.A. § 34-9-207(b) generally requires an employee claiming or receiving benefits to provide a signed release for certain medical records and information. Finally, if such employee refuses to provide a signed release for medical information as required by O.C.G.A. § 34-9-207 and, in the opinion of the Board, the refusal was not justified, then the employee shall not be entitled to any compensation at any time during the continuance of such refusal or to a hearing on the issues of compensability arising from his claim. *See* O.C.G.A. § 34-9-207(c).

In the matter before us, it appears to be undisputed that the Employee refused to execute a Board Form WC-207 release, and the administrative law judge found that the release the Employee did provide was not in compliance with O.C.G.A. § 34-9-207. Accordingly, in this case the administrative law judge did not err or otherwise exceed his authority in removing the then-set hearing from his hearing calendar, not to be reset until the Employee completes a properly executed Form WC-207 release with respect to each provider from whom he

has received treatment for his on-the-job injury. *See generally* O.C.G.A. § 34-9-102(c); O.C.G.A. § 34-9-207(c). As the administrative law judge's order indicates, and consistent with the plain language of O.C.G.A. § 34-9-207(b), each such release shall designate the provider to whom the release is directed.

Therefore, upon review of the Employee's appeal, we find that the administrative law judge did not err in making his order of September 10, 2010. We find that a preponderance of competent and credible evidence in the record supports Judge Smith's order. *See* O.C.G.A. § 34-9-103(a).

In accordance with the foregoing, the Appellate Division adopts as its own Judge Smith's order, dated September 10, 2010.

IT IS SO ORDERED, this the 24th day of January, 2011.

Concurring: Presiding Judge Richard S. Thompson and Judge Warren Massey.

STATE BOARD OF WORKERS' COMPENSATION

This order is electronically signed and approved.

Stephen B. Farrow/s.

Judge

Appellate Division

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