

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 1509

By: Pruitt

AS INTRODUCED

An Act relating to workers' compensation; amending 85 O.S. 2001, Section 17, which relates to determination of disability; modifying when certain testimony may be challenged; limiting parties who may challenge certain testimony; modifying selection of certain physician; requiring Workers' Compensation Court to give deference to certain testimony under certain circumstances; providing standard for determining reliability and relevance of certain testimony; prohibiting certain use of specific testimony; limiting certain opinion testimony; deleting obsolete language; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 85 O.S. 2001, Section 17, is amended to read as follows:

Section 17. A. 1. The determination of disability shall be the responsibility of the Workers' Compensation Court. Any claim submitted by an employee for compensation for permanent disability must be supported by competent medical testimony which shall include an evaluation by a physician, including, but not limited to, the treating physician or an independent medical examiner stating his or her opinion of the employee's percentage of permanent impairment and whether or not the impairment is job-related and caused by the accidental injury or occupational disease. Medical opinions addressing compensability and permanent impairment must be stated within a reasonable degree of medical certainty. For purposes of this section, a physician shall have the same meaning as defined in Section 14 of this title and shall include a person licensed by

another state who would be qualified to be a licensed physician under the laws of this state.

2. When the medical testimony to be introduced on behalf of the employee ~~and employer is divergent by more than twenty-five percent (25%) as to the extent of permanent impairment of the employee or when there is any disagreement in the evidence~~ disputed by the employer as to the medical cause of the medical permanent impairment or the percentage of impairment, or if the employee has no lost time from employment, ~~any party~~ the employer may challenge such testimony by giving written notice to all other parties and to the Administrator. The written notice shall be given prior to or during any prehearing conference. Upon receipt of such notice, the ~~challenging party and the party challenged shall select a third physician~~ Administrator shall permit the employer to select a physician of the employer's choice who shall be afforded a reasonable opportunity to examine the employee together with all medical records involved and any other medical data or evidence that the physician may consider to be relevant. The ~~third~~ physician shall issue a verified written report on a form provided by the Administrator to the Court stating his or her finding of the percentage of permanent impairment of the employee and whether or not the impairment is job-related and caused by the accidental injury or occupational disease. For evidentiary purposes, the treating physician's testimony shall be given deference for rating purposes only, and only after a determination of both relevance and reliability of testimony based on scientific, technical, or other specialized knowledge. In determining the reliability of the testimony, the inquiry may include, but not be limited to, testing peer review, error rates, and acceptability in the relevant scientific community, depending on the nature of the issue, the physician's particular expertise, and the subject of the testimony. In determining the relevance of the testimony, the court shall

determine whether the opinion may be validly and reliably drawn from the supporting medical evidence and whether the relationship between the opinion and the supporting medical evidence is sufficiently close and congruent so as not to render the opinion speculative. The Court shall not be permitted to split the difference between the treating physician's and independent medical examiner's opinions. The opinions of the treating physician and independent medical examiner shall be the only medical reports and opinions considered.

~~3. Any party may request the deposition testimony of any physician providing a written medical report on the issue of temporary disability, permanent disability, causation, apportionment or rehabilitation. Except in the case of Independent Medical Examiners appointed by order of the Court, the party requesting the deposition testimony of any such physician shall be responsible for the reasonable charges of the physician for such testimony, preparation time, and the expense of the deposition.~~

~~B. When the challenging party and the challenged party are for any reason unable or unwilling to agree upon the appointment of a third physician within ten (10) days, the Court shall appoint the third physician. Upon receipt of the third physician's report, the party shall have the right to object to the introduction into evidence of the report. The objection must be made by giving written notification to all parties and to the Court within five (5) days after receipt of the report. The physicians must then testify in person or by deposition.~~

~~C. Any physician who is appointed or selected pursuant to the provisions of this section shall be reimbursed for the medical examination, reports and fees in a reasonable and customary amount set by the Court, and these costs shall be borne by the employer.~~

~~D. C. 1. The Court shall develop and implement an independent medical examiner system by no later than July 1, 1995. The Court shall create, maintain and review a list of licensed physicians who~~

shall serve as independent medical examiners from a list of licensed physicians who have completed such course study as the Administrator of the Workers' Compensation Court may require. Such courses shall provide training to establish familiarity with the American Medical Association's "Guides to the Evaluation of Permanent Impairment", or alternative method or system of evaluating permanent impairment, for the category of injury established by the Administrator for which such physician desires to be an independent medical examiner. The Court shall, to the best of its ability, include the most experienced and competent physicians in the specific fields of expertise utilized most often in the treatment of injured employees. Physicians serving as third physicians before November 4, 1994, shall be considered to have met the requirements of this paragraph.

2. The independent medical examiner in a case involving permanent disability may not be a treating physician of the employee and may not have treated the employee with respect to the injury for which the claim is being made or the benefits are being paid. Nothing in this subsection precludes the selection of a health care provider authorized to receive reimbursement under Section 14 of this title to serve in the capacity of an independent medical examiner.

~~3. At any time during the pendency of the action but not less than thirty (30) days before a hearing, any party to the action may request the appointment of an independent medical examiner from the list of independent medical examiners. An independent medical examiner may be appointed less than thirty (30) days before a hearing if mutually acceptable to the parties. If the parties are unable to agree on the independent medical examiner, the Court may make the appointment. An independent medical examiner also may be appointed by the Court on its own motion. The appointment or selection of the independent medical examiner may be made when~~

~~requested by the parties even in the absence of any medical testimony supporting or contesting an issue.~~

4. The Court shall, to the best of its ability, maintain a geographic balance of independent medical examiners.

~~5.~~ 4. The parties are responsible for the expeditious transmittal of the employee's medical records, prior Court orders involving the employee, and other pertinent information to the independent medical examiner. The independent medical examiner may examine the employee as often as the independent medical examiner determines necessary.

~~6.~~ 5. The independent medical examiner shall submit a verified written report to the Court as provided in subsection A of this section and shall provide a copy of the report to the parties. ~~If the independent medical examiner undertakes active treatment of the employee, the independent medical examiner shall provide the Court and parties with progress reports, not less often than every thirty (30) days.~~ The independent medical examiner's report shall include a determination of whether or not the employee is capable of returning to light duty work, and what restrictions, if any, shall be followed by the employer in order to permit the employee to return to work.

~~7.~~ 6. If the independent medical examiner determines that the employee is capable of returning to work and the claimant elects not to do so, temporary total disability and medical benefits shall cease, unless otherwise ordered by the Court. In any case where the claimant contests the cessation of such benefits, the Court shall hear the dispute within thirty (30) days after the filing of the employee's Motion to Set for Trial. The trial shall not be delayed unless both parties agree.

~~8.~~ 7. Any independent medical examiner who is appointed or selected pursuant to the provisions of this subsection shall be reimbursed for the medical examination, reports and fees in a

reasonable and customary amount set by the Court, and these costs shall be borne by the employer.

~~9.~~ 8. The Court, in consultation with the Advisory Council on Workers' Compensation, shall create a review process to oversee on a continuing basis the quality of performance and the timeliness of the submission of medical findings by independent medical examiners.

~~10.~~ 9. The Court shall promulgate rules necessary to effectuate the purposes of this subsection.

~~E. Until the implementation of the independent medical examiner system in subsection D of this section, third physicians shall be selected or appointed as provided in subsections A and B of this section. Upon implementation of the independent medical examiner system, independent medical examiners shall be selected or appointed as provided in subsection D of this section.~~

~~F. The parties may stipulate to the appointment of a third physician or, upon implementation of the independent medical examiner system in subsection D of this section, an independent medical examiner, even in the absence of divergent medical testimony.~~

~~G. The impairment rating determined by the third physician or, upon implementation of the independent medical examiner system, the independent medical examiner, may be followed by the Court. If the Court deviates from the impairment rating, the Court shall specifically identify by written findings of fact the basis for such deviation in its order.~~

~~H. In no event may an independent medical examiner, or facility owned or operated, or partially owned or operated, by the independent medical examiner, treat an employee whose claim the independent medical examiner has reviewed for permanent impairment, return to work, or the necessity of further medical treatment, unless both parties agree.~~

SECTION 2. This act shall become effective November 1, 2002.

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