FILED

January 9, 2018



TN COURT OF WORKERS' COMPENSATION CLAIMS

Time: 11:49 A.M. EASTERN

TENNESSEE BUREAU OF WORKERS' COMPENSATION IN THE COURT OF WORKERS' COMPENSATION CLAIMS AT KNOXVILLE

Lisa Yeaman,) Docket No.: 2015-03-0237
Employee,)
v.)
Kindred Health Care) State File No.: 45169-2015
Employer,)
And)
Arch Insurance Company,) Judge Lisa A. Lowe
Carrier.)

ORDER DENYING MOTION TO DISMISS

This matter came before the Court on Kindred's Motion to Dismiss Ms. Yeaman's claim for failure to prosecute pursuant to Rule 41.02 of the Tennessee Rules of Civil Procedure or alternatively because her claim is barred by the statute of limitations.

According to the motion, Ms. Yeaman filed a Petition for Benefit Determination (PBD) on June 12, 2015. At Ms. Yeaman's request, the mediator issued a Notice of Withdrawal of the PBD on June 26, 2015. Ms. Yeaman then filed a second PBD on August 22, 2017, using the same docket and state file number as the 2015 PBD.

Kindred alleged Ms. Yeaman's two-year delay prejudiced its ability to investigate this claim, which cannot be overcome with "traditional legal tools of discovery." Kindred asserted that failure to dismiss this case will result in the Court's acquiescence of Ms. Yeaman's engagement in "on again/off again" litigation, which the Appeals Board discourages. Alternatively, Kindred averred Ms. Yeaman's claim is barred by the statute of limitations.

Ms. Yeaman argued she timely filed her claim and she is ready, willing, and able to prosecute the claim to a decision on the merits. Further, she stated she will comply with any and all scheduling orders issued by this Court.

In Taylor v. Amer. Tire Dist., 2017 TN Wrk. Comp. App. Bd. LEXIS 48, *6-10, (August 15, 2017), the Appeals Board held that a mediator's "notice of voluntary

withdrawal" of a PBD has no legal effect and does not serve as a voluntary dismissal of the claim for purposes of the statute of limitations. The Court acknowledges that a two-year delay is not ideal, nor encouraged. However, applying the *Taylor* holding, the Court holds that Ms. Yeaman timely filed her PBD, and its withdrawal does not voluntarily dismiss her claim. Therefore, the Court denies Kindred's Motion to Dismiss.

It is so **ORDERED**.

ENTERED January 9, 2018.

Lisa A. Lowe, JUDGE

Court of Workers' Compensation Claims

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Order was sent to the following recipients by the following methods of service on January 9, 2018.

Name	Certified	Fax	Email	Service sent to:
	Mail			
Josh Bond, Esq.,			X	jbond@hdclaw.com
Employee's Attorney				_
Charlie Pierce, Esq.,			X	cepierce@mijs.com
Employer's Attorney				

PENNY SHRUM, Court Clerk

WC.CourtClerk@tn.gov