

**FILED**

**May 3, 2019**

**TN COURT OF  
WORKERS' COMPENSATION  
CLAIMS**

**Time 7:39 AM**



**TENNESSEE BUREAU OF WORKERS' COMPENSATION  
IN THE COURT OF WORKERS' COMPENSATION CLAIMS  
AT COOKEVILLE**

<b>RICK CALDWELL,</b>	)	<b>Docket No. 2019-04-0074</b>
<b>Employee,</b>	)	
	)	
<b>v.</b>	)	<b>State File No. 78477-2018</b>
	)	
<b>FEDERAL MOGUL MOTORSPORTS</b>	)	
<b>CORP.,</b>	)	
<b>Employer.</b>	)	<b>Judge Robert Durham</b>

**ORDER COMPELLING INDEPENDENT MEDICAL EXAMINATION**

This matter came before the Court on April 30, 2019, on Federal Mogul's motion to compel an independent medical examination (IME) of Mr. Caldwell. After considering the circumstances and the parties' arguments, the Court finds that Federal Mogul's request is not unreasonable and holds that Mr. Caldwell must submit to an IME by Dr. George Lien.

Mr. Caldwell asserted he sustained a work-related injury to his shoulder and neck on October 10, 2018. Federal Mogul provided treatment for his shoulder and the authorized physician eventually referred him to a spine specialist, Dr. Abiola Atanda, for his neck. After reviewing a cervical MRI, Dr. Atanda recommended a multi-level cervical fusion. Based on Mr. Caldwell's history, Dr. Atanda attributed the need for surgery to the work accident.

At that point, Federal Mogul requested an IME with Dr. George Lien, but Mr. Caldwell has refused to attend. He does not dispute that Tennessee Code Annotated sec. 50-6-204(d)(1) and *Overstreet v. TRW Commercial Steering Div.*, 256 S.W.3d, 626, 636 (Tenn. 2008), entitles an employer to a physical

examination unless the request is “unreasonable in light of the circumstances.” However, he contends the request is, in fact, unreasonable.

In support of this contention, Mr. Caldwell argues that Federal Mogul is simply hoping to use the IME to create a conflict as to causation where none now exists since Federal Mogul has no medical evidence to question Dr. Atanda’s causation opinion. Thus, he contends an IME is unreasonable at this stage. In response to Federal Mogul’s argument that a physical examination or additional testing would be of little use after Mr. Caldwell undergoes fusion surgery, Mr. Caldwell posits that a records review would be sufficient for an expert to address causation even after surgery.

After consideration, the Court does not find these arguments sufficient to overcome Federal Mogul’s statutory right to a medical evaluation. Mr. Caldwell did not cite any persuasive authority that an employer is not entitled to an IME unless it already has medical grounds for contesting the authorized doctor’s opinion. The Court also disagrees with Mr. Caldwell’s assertion that a records review alone would likely carry the same weight as one done in conjunction with a pre-surgery examination.

Thus, so long as Federal Mogul makes a good faith effort to schedule Dr. Lien’s IME as soon as possible in order to minimize delay, the Court finds its motion to be reasonable and orders Mr. Caldwell to attend the IME. Mr. Caldwell’s failure to attend may result in sanctions, including the possible dismissal of his claim. *Overstreet* at 636.

But this does not end the analysis. Mr. Caldwell also requests that, should the Court allow the IME, he be allowed to record it. Tennessee Code Annotated section 50-6-204(d)(1) provides that an employee required to attend an IME has the right to have his own physician “present at the examination.” Mr. Caldwell asked that, given the time and income Dr. Atanda would lose if he attended in person, the Court allow him to record the IME for Dr. Atanda to review at his convenience.

In considering this request, the Court must do so without the assistance of binding precedent specifically addressing this issue. On the one hand, there would be little, if any, HIPAA or privacy concerns given that all of the parties would be aware that the recording was taking place at the patient's request. It also seems much less intrusive than having another doctor actually present at the examination. On the other hand, however, the Court is aware that there may be unseen complications and potential for abuse in other situations. It can also be argued that a strict interpretation of the statute only allows for the doctor's presence, and any recording would be beyond the statute's scope. As a result, the Court denies Mr. Caldwell's request to record the examination.

However, in the alternative, Mr. Caldwell also proposed that he be allowed to use a video-conferencing application so that Dr. Atanda may observe from his office and reduce the time and inconvenience to him. This appears to be a reasonable compromise. Technological advances have made video-conferencing simple, cheap, reliable and available to everyone. Further, the Court finds that it amply meets the criteria of section 50-6-204(d)(1) in that Dr. Atanda shall be "present" at the examination. There is nothing in the statute that requires a physical attendance and to limit the statute in that manner would be to do so in defiance of the current state of technology. Thus, Mr. Caldwell's designated physician, and only this physician, shall be allowed to attend the examination by video-conference so long as it is not actually recorded.

It is so **ORDERED**.

**ENTERED this the 3rd day of May 2019**

A handwritten signature in blue ink, appearing to read "Robert V. Durham", is written over a horizontal line.

Judge Robert V. Durham

Court of Workers' Compensation Claims

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was sent to the following recipients by the following methods of service on this the 3 day of May 2019.

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