

IN THE SUPREME COURT OF THE CHEROKEE NATION

STANLEY JOHN,)
Claimant/Appellee)
)
v.)
)
CHEROKEE NATION,)
Respondent/Appellant)
)
HUDSON INSURANCE COMPANY,)
Insurance Carrier)

Case No. SC-2018-01

2018 APR -5 PM 1:11
CHEROKEE NATION
SUPREME COURT
KESIDALL BIRD, COURT CLERK
FILED

RESPONSE TO PETITION IN ERROR

- A. Is Appellee willing to participate in a Settlement Conference?
_____ YES X NO

- B. Appellee’s brief statement as to proceeding: See Exhibit “A” attached hereto.

Date: April 5, 2018

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Brian Berry, do hereby certify that on this 5th day of April, 2018, I did cause to be filed with the Court Clerk of the Cherokee Nation Supreme Court a true, complete and correct copy of the above and foregoing Response to Petition in Error, and also mailed a true and correct copy with attachment, postage prepaid, to the following persons:

Jay Jones
Attorney at Law
501 N Walker, Ste 140
Oklahoma City, OK 73102



Brian R. Berry

EXHIBIT A

STATEMENT AS TO PROCEEDING

A previous Arbitration Order issued September 11, 2015 by Arbitrator Victor Seagle found Mr. John had sustained an on-the-job injury to his right knee on 3/14/15, and that he was in need of further treatment, including surgery, as set out by Dr. Basener. Arbitrator Seagle also ordered Cherokee “to pay eight weeks of Temporary Total Disability to the Claimant (\$3,968.88- all of which has accrued) and is to pay additional Temporary Total Disability benefits – if medically necessary following any surgery.”

Cherokee complied with the September 11, 2015 Order for payment of 8 weeks of Temporary Total Disability and Claimant had surgery to the right knee by Dr. Basener on 12/3/15. Respondent then paid Claimant temporary disability from the date of surgery, December 3, 2015 to May 3, 2016.

The Arbitration Order entered on November 7, 2016, by Arbitrator Shannon Otteson-Gosa, awarded PPD to the right knee and TTD from April 15, 2015 to December 2, 2015. Cherokee complied with payment of the PPD Award but appealed the TTD Award to the District Court. In paragraph 4 of the November 7, 2016 Order, Arbitrator finds that “Claimant was unable to work during the period for which Claimant now seeks temporary total disability, namely April 15, 2015 to December 2, 2015, therefore the Arbitrator FINDS res judicata does not apply and the Respondent is ordered to pay the additional temporary total disability benefits sought for 25 weeks at \$496.11 per week, less \$700.00 paid to Claimant as sick leave pay.” The previous Arbitration Order dated September 11, 2015 did not deny any specific period of TTD and allowed for “additional” Temporary Total Disability Benefits beyond 8 weeks awarded, if medically necessary.

Cherokee appealed the TTD award to the Cherokee Nation District Court. Both parties briefed the matter. The Court and Judge Luke Barteaux issued an Order on March 2, 2017 (should be March 2, 2018). In that Order Judge Barteaux advised that the court file, briefs, transcript and exhibits were reviewed. Judge Barteaux found the Order of the Arbitrator was supported by competent evidence. Judge Barteaux affirmed and specifically adopted the Order of the Arbitrator. Cherokee filed a timely appeal to this Court.

Claimant respectfully requests that the Supreme Court affirm the decision of the District Court affirming the Arbitrator's award of TTD in the amount of \$11,702.75 for the time period April 15, 2015 to December 2, 2015 (less eight weeks previously Ordered). Claimant additionally requests attorney fees and costs as the result of this appeal.

RESPONSE TO REQUEST FOR ORAL ARGUMENT

Claimant requests and Oral Argument and believes it is necessary in this appeal. The briefing process has been done extensively in this matter already and is included in the record.