



Workers' Compensation Report

Amber D. Cameron

Heyl, Royster, Voelker & Allen, P.C., Edwardsville

Voluntary Arbitration: Section 19(p) of the Illinois Workers' Compensation Act

Section 19(p) has been a part of the Illinois Workers' Compensation Act ("Act") for decades but has rarely been used by parties to resolve issues within a claim. Recently, there has been a resurgence in use of this little-known section of the Act, leaving many veteran practitioners to ask the question: what is section 19(p) and how may I use it to move my claim toward resolution? Voluntary arbitration under section 19(p) of the Workers' Compensation Act and section 19(m) of the Occupational Disease Act essentially serve the same function: expedited final decision related exclusively to temporary total disability, permanent partial disability, and/or medical expenses. *See* 820 ILCS 305/19(p); 820 ILCS 310/19(m).

Relevant Statutes and Administrative Codes

Section 19(p) provides as follows. It begins by stating:

(p) After filing an application for adjustment of claim, but prior to the hearing on arbitration, the parties may voluntarily agree to submit such application for adjustment of claim for decision by an arbitrator under this subsection where such application for adjustment of claim raises only a dispute over temporary total disability, permanent partial disability, or medical expenses. Such agreement shall be in writing in such form as provided by the Commission.

Section 19(p) provides for the Commission to establish rules, stating:

Applications for adjustment of claim submitted for decision by an arbitrator under this subsection shall proceed according to rule as established by the Commission. The Commission shall promulgate rules including, but not limited to, rules to ensure that the parties are adequately informed of their rights under this subsection and of the voluntary nature of proceedings under this subsection.

It further provides:

The findings of fact made by an arbitrator acting within his or her powers under this subsection in the absence of fraud shall be conclusive. However, the arbitrator may on his own motion, or the motion of either party, correct any clerical errors or errors in computation within 15 days after the date of receipt of such award of the arbitrator and shall have the power to recall the original award on arbitration, and issue in lieu thereof such corrected award.

The post-decision standard of review is also provided by Section 19(p):

The decision of the arbitrator under this subsection shall be considered the decision of the Commission and proceedings for review of questions of law arising from the decision may be commenced by either party pursuant to subsection (f) of Section 19.

Section 19(p) also states:

The Advisory Board established under Section 13.1 shall compile a list of certified Commission arbitrators, each of whom shall be approved by at least 7 members of the Advisory Board. The chairman shall select 5 persons from such list to serve as arbitrators under this subsection. By agreement, the parties shall select one arbitrator from among the 5 persons selected by the chairman except that if the parties do not agree on an arbitrator from among the 5 persons, the parties may, by agreement, select an arbitrator of the American Arbitration Association, whose fee shall be paid by the State in accordance with rules promulgated by the Commission. Arbitration under this subsection shall be voluntary.

820 ILCS 305/19(p).

The Rules Governing Practice Before the Workers' Compensation Commission give additional direction on the use of voluntary arbitration under section 19(p) of the Workers' Compensation Act and section 19(m) of the Workers' Occupational Disease Act. Ill. Admin. Code tit. 50, § 9030.100 (2016). Section 9030.100 outlines the process for selection of arbitrators chosen to hear voluntary arbitration cases, how to request a voluntary arbitration before the Commission, the conduct of hearings, and option for using the services of an outside arbitrator with the American Arbitration Association if the parties are unable to agree on one of the Commission certified arbitrators.

Procedural Issues of Importance

Voluntary arbitration under section 19(p) of the Workers' Compensation Act or section 19(m) of the Occupational Disease Act (herein after "voluntary arbitration") allows the parties to proceed before a chosen arbitrator for a final decision on the issues of temporary total disability (TTD), permanent partial disability (PPD), and/or medical expenses. All parties to the claim, including the petitioner, respondent, and their counsel, must agree to proceed with a voluntary arbitration. The parties must all sign the voluntary arbitration form (IC36) and file the form with the Commission. The form indicates that the parties all understand it is a voluntary choice to proceed, and by doing so the parties are waiving certain rights; most importantly, the right to appeal the decision of the chosen arbitrator.

Decisions under voluntary arbitration are binding on the parties and are a final decision of the Commission. The decision cannot be appealed to the Commission like those under section 19(b) of the Act. If the parties agree to move forward with voluntary arbitration on one or more of the limited issues allowed, the parties must also agree on one of the five (5) designated arbitrators selected by the Chairman of the Commission from a list compiled by the Workers' Compensation Advisory Board to conduct the voluntary arbitration. Ill. Admin. Code tit. 50 § 9030.100 (a). As of the date of this publication, the five designated arbitrators include: Arbitrator Paul Cellini, Arbitrator Stephen Friedman, Arbitrator Gerald Granada, Arbitrator Gerald Napleton, and Arbitrator Dennis O'Brien. There is no set term for the

chosen arbitrators, and if a vacancy occurs among those selected, the Chairman shall select an arbitrator from the Advisory Board list to fill the vacancy. Ill. Admin. Code tit. 50 § 9030.100 (a). If the parties are unable to agree upon one of the five certified arbitrators, the parties may select an arbitrator from the American Arbitration Association to conduct the hearing with the fee for the arbitrator to be paid by the State. Ill. Admin. Code tit. 50 § 9030.100 (a),(d).

Once the parties have signed and filed the voluntary arbitration form, the Commission assigns the claim to the chosen arbitrator and the hearing may proceed in any venue where the arbitrator is assigned. Therefore, if the parties choose an arbitrator who is currently assigned to Zone 4, they must appear at one of the Zone 4 venues before that arbitrator for the hearing. However, it is possible for any of the parties to testify by evidence deposition or submit a stipulated Statement of Testimony in lieu of appearance at the hearing. Since the issues are limited and the facts are usually uncontroverted, testimony by deposition or affidavit is often used when travel is inconvenient. If a Statement of Testimony is submitted, it is important to remember it is not a Statement of Facts that must be accepted by the arbitrator, rather the arbitrator still has the duty to review the evidence and testimony and make a finding of facts based upon the same.

Given the voluntary arbitration decisions are not appealable as to questions of fact, there are no reported decisions. However, it is clear the most common reason parties choose to proceed with voluntary arbitration is to facilitate a quick and efficient means of resolving issues with medical bills prior to the ultimate settlement of the claim on all other issues. A growing number of workers' compensation claims involve payments by Medicare, ERISA plans, and retirement system group health plans which will not negotiate payment of bills and require reimbursement for payment of any expenses related to a workers' compensation injury. Due in part to more employees deferring retirement, parties are more frequently tasked with protecting Medicare's interests pursuant to the Medicare Secondary Payer (MSP) laws when settling a workers' compensation claim with a Medicare eligible (or soon to be Medicare eligible) employee. All parties in a workers' compensation case have significant responsibilities under the MSP laws to protect Medicare's interests when resolving cases that include future medical expenses. If there are future treatment recommendations on the table at the time of settlement, the options available to the parties in the workers' compensation claim are to leave medical benefits open in a contract for settlement, obtain a Medicare Set-Aside (WCMSA), or proceed with hearing for a final decision on the issues of future medical expenses. A decision pursuant to voluntary arbitration allows the parties to quickly obtain a final decision on the reasonableness, necessity, causal connection, and liability for prior and future medical expenses, and the parties may then proceed with settlement of all other issues in the claim.

When submitting evidence for voluntary arbitration, the parties usually stipulate to submission of excerpts of medical and other evidence necessary for the arbitrator to make a finding of fact on the issues. The parties may also submit a joint proposed voluntary arbitration decision. In this manner, the arbitrator does not have to sift through documents irrelevant to the issues at hand and can expedite the decision. However, it is important to ensure the arbitrator has enough evidence available in the record to make his or her findings.

To proceed with the voluntary arbitration before an arbitrator for which the claim was not previously assigned, the Commission reassigned the claim to the parties' chosen arbitrator for the hearing. Once the voluntary arbitration decision is issued, that arbitrator retains jurisdiction for a limited period of 30 days. Therefore, if the parties have been able to reach a compromised settlement on all other issues within that time, the parties will submit the settlement contract for approval with that arbitrator.

Take-Aways

As interest by arbitrators and practitioners in voluntary arbitration proceedings continue to grow, it's important for defense counsel to understand the advantages and risks in order to advise their clients appropriately. It can be an efficient



way by joint effort of the parties to obtain a final decision of the Commission when required for limited issues, especially medical bills. Both the petitioner and respondent, as well as their counsel, must affirmatively agree to proceed with the voluntary arbitration and certify on Commission form their joint agreement as to the issue(s) in dispute, the designated arbitrator to assign the claim, and their understanding that the decision of the chosen arbitrator as to all issues of fact is final and unappealable. By proceeding with voluntary arbitration though, the parties may be able to streamline the hearing issues, obtain a decision quickly, and then proceed with closure of all other issues through a negotiated settlement contract.

About the Author

Amber D. Cameron is a partner at *Heyl, Royster, Voelker & Allen, P.C.*, working out of the firm's Edwardsville and St. Louis offices, where she focuses her practice on workers' compensation and toxic tort litigation. A seasoned trial attorney, Ms. Cameron represents employers of all sizes throughout southern Illinois and Missouri. Regularly providing educational seminars to insurance companies, third-party administrators, and self-insured employers, she has a keen eye for detail and a tactical approach, working diligently with her clients to develop creative resolution strategies for her claims. Before joining Heyl Royster, Ms. Cameron gained advanced knowledge of Illinois workers' compensation law while working as a staff attorney at the Illinois Workers' Compensation Commission. She earned her law degree and a certificate in dispute resolution from the University of Missouri-Columbia School of Law, where she excelled in legal writing.

About the IDC

The Illinois Defense Counsel (IDC) is the premier association of attorneys in Illinois who devote a substantial portion their practice to the representation of business, corporate, insurance, professional and other individual defendants in civil litigation. For more information on the IDC, visit us on the web at www.IDC.law or contact us at PO Box 588, Rochester, IL 62563-0588, 217-498-2649, 800-232-0169, admin@IDC.law.