

RESPONDENT ORDERED TO PAY FOR MEDICAL MARIJUANA

NJ Workers' Compensation • July 26, 2018

Steven McNeary v. Freehold Township, Claim Petition Nos. 2007-10498, 2008-8094 and 2014-10233 (N.J. Division of Workers' Compensation, decided June 28, 2018).

On June 28, 2018, a Judge of Compensation ruled that the respondent, Freehold Township, must pay for medical marijuana for the petitioner, Steven McNeary, who suffers from muscular spasticity resulting from an injury sustained while in the respondent's employ. Despite the respondent's objections, the Judge of Compensation refused to follow the recent Maine Supreme Court decision of *Burgoin v. Twin Rivers Paper Co.*, Docket No. WCB-16-433, Decision No. 2018 ME 77 (Supreme Court, decided June 14, 2018). In *Burgoin*, the Maine Supreme Court overruled a lower court that had ordered a workers' compensation carrier to pay for marijuana for an injured worker, discussing at length the penalties an employer and its insurance company could face for violating the Controlled Substances Act:

It also bears noting that aside from the exposure to a federal conviction itself, the penalties for violation of the CSA can be significant. Pursuant to the least severe penalty ranged for a violation . . . the sentence, at minimum, is a mandatory fine of \$1,000, and it may also include as much as one year of incarceration, with an even greater sentence if certain aggravating factors are present, such as a prior conviction for any drug offense, including offenses established by the CSA.

The Maine Supreme Court found that were the employer to comply with the hearing officer's order and knowingly reimburse the injured worker for the costs of the medical marijuana as permitted by the Maine Medical Use of Marijuana Act, the employer would be engaging in conduct made criminal by the CSA. Accordingly, the Maine Supreme Court concluded that compliance with both would be an impossibility.

Despite the respondent's objections, the Judge of Compensation declined to follow the Maine Supreme Court's ruling. As the Judge of Compensation reasoned:

I don't believe that the New Jersey Medical Marijuana Act is in conflict with that. Certainly, I don't understand how a

carrier, who will never possess, never distribute, never intend to distribute these products, who will [merely] sign a check into in attorney's trust account is in any way complicit with the distribution of illicit narcotics.

The Judge of Compensation also expressed concern over the potential for abuse of the opioid drugs that the petitioner's physicians found to be his only treatment alternative. As the Judge of Compensation concluded:

I believe that medical marijuana is safer, it's less addictive, it is better for the treatment of pain. It is better for, in this particular case, the muscular spasticity which Mr. McNeary suffers from. The long term prognosis is better and, quite frankly, it is cheaper for the carriers. I think it's the right thing to do and I feel no moral or legal hesitancy in that.

It is unknown at present if the respondent intends to appeal the court's ruling. However, the Judge of Compensation did express a desire for a higher court to weigh in on the issue:

I would welcome at some point in time the Appellate Division in New Jersey or the Supreme Court to address the issue, because clearly then I will be bound by what they say, but . . . I think it's time for us, as the Division of Compensation, to try to get away from these opioids which are killing people and I don't say that lightly. II



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