

decline to make a ruling on a petition when it appears that there is no actual controversy or there exists some other good cause why a declaratory ruling should not be made. (*See*, JRP 15(F)(4)).

We decline to rule on the petition because we believe it fails to articulate an actual controversy over the construction or validity of the applicable statute, in this case I.C. § 72-432(11).

As noted above, Petitioner has framed the issue as being whether an injured worker has the right to retain a health care provider as a medical expert with the expectancy that such a retained expert cannot be contacted by opposing counsel on an *ex parte* basis. This question is succinctly answered by the provisions of I.C. § 72-432(11) which provides, in pertinent part:

An attorney representing the employer . . . shall have the right to confer with any health care provider without the presence of the opposing attorney, representative or party, except for a health care provider who is retained only as an expert witness. (Emphasis applied).

Therefore, the statute unambiguously anticipates that it is only in the case where a medical provider's involvement in a case is solely as a retained expert witness that opposing counsel is prevented from contacting that provider. The statute is not ambiguous, and it is not in need of construction by the Industrial Commission.

Rather, what is at issue in this matter is the factual question of whether or not, at the time of the contacts by defense counsel, Dr. Frizzell was something other than a medical provider who had been retained only for the purposes of providing expert testimony. To ascertain whether defense counsel's actions were in violation of the statute only requires that the Commission ascertain Dr. Frizzell's status at the time of the contacts in question. Although this is certainly one of the Commission's obligations as the finder of fact, this assessment is not properly the subject of a JRP 15 petition for declaratory ruling. Typically, petitions for declaratory ruling involve the validity or construction of a statute or regulation in light of

undisputed facts. Here, the statutory scheme seems clear, yet the facts are hotly disputed by the parties.

We believe that this matter is more properly handled as one of the issues to be decided by the Referee assigned to this case, and in the normal course of a proceeding before the Industrial Commission.

THEREFORE, for these reasons we decline to entertain Claimant's petition for declaratory ruling, and dismiss the same.

DATED this 11th day of January, 2012.

INDUSTRIAL COMMISSION

/s/
Thomas E. Limbaugh, Chairman

/s/
Thomas P. Baskin, Commissioner

/s/
R.D. Maynard, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of January, 2012 a true and correct copy of **ORDER ON PETITION FOR DECLARATORY RULING** was sent by regular United States Mail upon each of the following:

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/s/ _____