

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1192**

Keith Johnson, D. C.,
Petitioner,

vs.

Office of Administrative Hearings,
Respondent.

**Filed April 5, 2021
Petition dismissed; motion denied
Worke, Judge**

Office of Administrative Hearings
File No. 10589406-CP-2204

David C. Wulff, Law Office of David C. Wulff, Roseville, Minnesota (for petitioner)

Keith Ellison, Attorney General, Allen Cook Barr, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Worke, Judge; and Kalitowski,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

WORKE, Judge

In this declaratory-judgment action under Minn. Stat. § 14.44 (2020), petitioner asks us to declare Minn. R. 1420.1850 (2019) invalid because it exceeds the scope of the statutory rulemaking authority of respondent Office of Administrative Hearings (OAH) and because it is unconstitutional. Because petitioner lacks standing to challenge the rule, we dismiss the petition.

FACTS

Petitioner Keith Johnson, D.C., filed a petition for declaratory judgment following the events described in *Koehnen v. Flagship Marine Co.*, 947 N.W.2d 448 (Minn. 2020).¹ In that case, Koehnen was injured while working for Flagship Marine Company. *Koehnen*, 947 N.W.2d at 450. Johnson provided chiropractic treatment and supplies to Koehnen and submitted his charges to Flagship’s workers’ compensation insurer. *Id.* But Flagship and the insurer denied liability for Koehnen’s injury, and Johnson’s bills were not paid. *Id.*

Koehnen filed a claim seeking workers’ compensation benefits, including payment for Johnson’s treatment. *Id.* Koehnen’s attorney gave Johnson notice of his right to

¹ OAH moved to strike portions of Johnson’s brief discussing the underlying facts of the *Koehnen* case, arguing that those facts are outside the record in this matter. *See* Minn. Stat. § 14.365 (2020) (providing that the official rulemaking record “constitutes the official and exclusive agency rulemaking record with respect to agency action on or judicial review of the rule”). But OAH also asserts that Johnson lacks standing to challenge the rule based, in part, on the same underlying facts. To resolve whether Johnson has standing, we must consider whether the challenged rule “interferes with or impairs, or threatens to interfere with or impair the legal rights or privileges of the petitioner.” *See* Minn. Stat. § 14.44. Thus, we deny OAH’s motion to strike and consider the underlying facts to the extent that they purport to establish Johnson’s standing to bring his petition.

intervene in the matter. *Id.* But Johnson chose not to intervene and did not move to intervene under Minn. Stat. § 176.361, subd. 2 (2020), which allows interested persons to intervene in a pending workers' compensation case. *Id.*

The matter proceeded without Johnson. Koehnen and Flagship entered into a settlement agreement that “resolved Koehnen’s claim for benefits, settled the interests of an intervening health care provider, and extinguished the claims of the potential intervenors who received adequate notice but did not intervene, including Johnson.” *Id.* But the settlement “did not resolve the liability dispute between Koehnen and Flagship.” *Id.* The stipulation for settlement, eventually approved by the compensation judge, provided that “pursuant to Minn. Stat. § 176.361, [Johnson’s] failure to intervene shall result in [his] claims being extinguished and prohibit [him] from collecting or attempting to collect the extinguished interest from the [e]mployee, [e]mployer, [i]nsurers, or any government program.” *Id.* The compensation judge entered an award on the stipulation that provided: “More than 60 days has expired and pursuant to Minn. Stat. § 176.361, subd. 2, any potential interest[] of Johnson . . . [is] hereby extinguished.” *Id.* at 450-51.

By petition under section 14.44, Johnson challenges rule 1420.1850, which governs the procedure for the resolution of claims in cases with intervenors, asserting that the rule injured him because it authorized the compensation judge to extinguish his potential intervenor interest.

DECISION

Johnson challenges the validity of rule 1420.1850 by petition filed under section 14.44. “In proceedings under section 14.44, the court [of appeals] shall declare the rule

invalid if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without compliance with statutory rulemaking procedures.” Minn. Stat. § 14.45 (2020). Johnson asserts that rule 1420.1850 exceeds OAH’s statutory rulemaking authority and violates the constitutional rights of potential intervenors who choose not to intervene in matters before a compensation judge.

Before addressing the merits of a petition under section 14.44, however, we must determine whether the petitioner has standing to challenge the rule. *Rocco Altobelli Inc. v. Dep’t of Commerce*, 524 N.W.2d 30, 34 (Minn. App. 1994). We may only consider the validity of the rule when “it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair the legal rights or privileges of the petitioner.” *Id.* (quoting Minn. Stat. § 14.44); *see also Minn. Voters All. v. State*, __ N.W.2d __, __, 2021 WL 317737, at *4 (Minn. App. Feb. 1, 2021) (dismissing petition based on petitioner’s lack of standing). To establish standing, the petitioner must allege an injury that is “uniquely attributable to the rule.” *Minn. Voters All.*, __ N.W.2d at __, 2021 WL 317737, at *3. When the injury asserted derives from a statute, and not a rule, the petitioner lacks standing. *Rocco Altobelli*, 524 N.W.2d at 34-35.

Johnson asserts that he has standing to bring this petition because rule 1420.1850 authorizes a compensation judge to extinguish a potential intervenor’s interest in a workers’ compensation case when the potential intervenor chooses not to intervene. OAH asserts that Johnson lacks standing because the injury he alleges derives from the statutory mandate that when “a motion to intervene is not timely filed . . . the potential intervenor interest shall be extinguished.” *See* Minn. Stat. § 176.361, subd. 2(a). To determine

whether Johnson’s alleged injury is uniquely attributable to rule 1420.1850, or whether the injury is actually attributable to section 176.361 (2020), we consider the language of both.

Section 176.361 governs intervention in workers’ compensation matters. It provides that a potential intervenor “may” intervene in any matter before a compensation judge. *Id.*, subd. 1. It also provides that a potential intervenor “desiring to intervene in a workers’ compensation case . . . shall submit a timely written motion to intervene.” *Id.*, subd. 2. It further establishes the deadlines by which a potential intervenor must intervene, and provides that when “a motion to intervene is not timely filed . . . the potential intervenor interest shall be extinguished.” *Id.*, subd. 2(a).

Rule 1420.1850 governs the resolution of claims with intervenors in matters before a compensation judge within OAH. It provides that “[i]f the [compensation] judge finds a potential intervenor had proper notice or actual notice of the right to intervene within a reasonable period of time before a case was finally concluded but failed to act, the judge may order extinguishment of the potential intervenor’s interest under [Minn. Stat. §] 176.361.” Minn. R. 1420.1850, subp. 1(A).

The unambiguous language of the statute and the rule demonstrate that the extinguishment of a potential intervenor’s interest under these circumstances is attributable to section 176.361. The statute mandates that a potential intervenor’s interest “shall” be extinguished when the potential intervenor does not file a timely motion to intervene. Minn. Stat. § 176.361, subd. 2(a). Rule 1420.1850 acknowledges that mandate and provides that a compensation judge may extinguish a potential intervenor’s interest if the

potential intervenor, who has proper notice of his right to intervene, does not file a motion to intervene pursuant to section 176.361.²

Johnson, however, argues that his injury is uniquely attributable to the rule because it allows for compensation judges to extinguish a potential intervenor's interest under circumstances not contemplated by the statute. He asserts that section 176.361 does not require the extinguishment of a potential intervenor's interest in a matter when the potential intervenor chooses not to intervene. Johnson's argument rests on a strained interpretation of section 176.361.

Johnson maintains that extinguishment is only required under the statute when a potential intervenor files an *untimely* motion to intervene. He contends that his interpretation is correct because the statute provides that a potential intervenor "may" intervene, giving the potential intervenor the choice as to whether or not to intervene, and because the statute requires extinguishment when a motion "is not *timely* filed." *See id.*, subds. 1, 2 (emphasis added). Johnson also observes that subdivision 2—which contains the extinguishment provision—begins with the clause "[a] person desiring to intervene in a workers' compensation case." *See id.*, subd. 2. He therefore asserts that the extinguishment provision is intended only to affect those "desiring to intervene."

The language of the statute does not support Johnson's interpretation. The clause "[w]here a motion to intervene is not timely filed" encompasses instances when an

² We observe that the rule, in fact, purports to provide greater protection to potential intervenors than the statute—indicating that a compensation judge "may" extinguish a nonintervening potential intervenor's interest. Minn. R. 1420.1850, subp. 1(A).

untimely motion is filed and instances when no motion is filed at all. And while potential intervenors may choose not to intervene, the consequence of that choice, under the *statute*, is that the potential intervenor's interest will be extinguished. Thus, Johnson's argument that rule 1420.1850 allows a compensation judge to extinguish a nonintervening potential intervenor's interest in circumstances outside the limits of section 176.361 is unavailing.

Because the statute requires a nonintervening potential intervenor's interest to be extinguished, rule 1420.1850 merely effectuates what is required under section 176.361. Johnson's interest would have been extinguished by operation of section 176.361 even if rule 1420.1850 did not exist. Thus, because Johnson's injury is attributable to section 176.361, and is not "uniquely attributable" to rule 1420.1850, he lacks standing to bring a section 14.44 petition challenging rule 1420.1850.

Petition dismissed; motion denied.