

In the ORS 656.340 Vocational Services Dispute of

Anderson, Edwin, Claimant

Contested Case No: H01-045

PROPOSED & FINAL ORDER

February 14, 2002

EDWIN D. ANDERSON, Petitioner

SAIF CORPORATION, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

Claimant appeals the Administrative Order issued on February 27, 2001 by the Rehabilitation Review Unit (RRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (director or department) determining that he is ineligible for vocational services. On February 11, 2002, Administrative Law Judge Catherine P. Coburn conducted a telephone hearing in this matter. *Pro se* petitioner Edwin D. Anderson (claimant) failed to appear. Respondent SAIF Corporation (insurer) was represented by attorney James D. Booth. WCD waived appearance.

The record of this proceeding, consisting of a tape recording of the hearing, all evidence received, and all hearing papers filed, has been considered. The findings of fact set out below are based upon the entire record.

ISSUE

The issue is whether insurer established a *prima facie* case in the record to support its denial of vocational services.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 9 and insurer's Supplementary Exhibits A, B, C, 10 and 11 were received into the record without objection. I also include the file as evidence in the record.

FINDINGS OF FACT

On March 7, 2000, claimant suffered a compensable injury while working as a janitor. (Ex. A). On April 13, 2000, insurer accepted cervical, thoracic and lumbar strains. (Ex. B). On October 16, 2000, attending physician Jennifer K. Lawlor, MD found claimant's condition medically stationary without permanent impairment. (Ex. 1). Dr. Lawlor imposed no restrictions on claimant's activities. (Ex. 3).

On November 2, 2001, insurer issued a Notice of Closure awarding no permanent partial disability. (Ex. 2). On February 2, 2001, based on the medical arbiter's report, WCD's Appellate Review Unit (ARU) issued an Order on Reconsideration awarding 28 percent unscheduled permanent partial disability (UPPD). (Exs. 4 and 5). On February 14, 2001, insurer issued a Notice of Ineligibility for Vocational Assistance. (Ex. 6). Insurer appealed the extent of PPD and on July 26, 2001, the Workers' Compensation Board's Administrative Law Judge John

Mark Mills issued an Opinion and Order reducing the PPD award to zero. (Ex. 10). On November 27, 2001, the Board affirmed the zero PPD award. (Ex. 11).

CONCLUSIONS OF LAW AND REASONING

Jurisdiction lies with the Director. ORS 656.340(4). In reviewing the administrative order, I may admit evidence which was not before RRU and make independent findings of fact. *Colclasure v. Washington County School District No. 48-J*, 317 Or 526, 537 (1993); *Joseph A. Richard*, 1 WCSR 3 (1996).

Pursuant to OAR 137-003-0670, when a party is notified of the time and place of the hearing and fails to appear for hearing for reasons not beyond that party's reasonable control, an adverse order may be entered only upon a *prima facie* case. The hearing officer may consider whether the record contains evidence that persuades her of the existence of facts necessary to support the order. Claimant was notified of the time of the hearing but was unavailable by telephone.¹ I now consider whether the record contains facts establishing a *prima facie* case.

In the administrative order, RRU relied on the opinion of the attending physician rather than that of the medical arbiter. Inasmuch as Dr. Lawlor had imposed no physical restrictions and had released claimant to regular work, RRU determined that claimant was ineligible for vocational assistance. I agree.

Under ORS 656.340(1)(a), the insurer is obligated to provide vocational assistance to injured workers who are eligible. In order to qualify as eligible for vocational assistance, an injured worker must be unable to return to regular work. OAR 436-120-0320(8)(c)(A) (eff. 6-1-00). Here, attending physician Lawlor released claimant to regular work as a janitor without restrictions. Therefore, RRU correctly determined that claimant is ineligible for vocational assistance.

Pursuant to OAR 436-120-0320(2)(c), an insurer is not required to determine an injured worker's eligibility if the claim was closed without a PPD award. Here, Administrative Law Judge Mills found that claimant suffered zero PPD and the Board affirmed. Therefore, claimant is ineligible for vocational assistance.

In conclusion, claimant is ineligible for vocational assistance because he fails to qualify under both OAR 436-120-0320(8)(c)(A) and OAR 436-120-0320(2)(c). I find that insurer established a *prima facie* case in the record to support its denial of vocational services and the record contains facts necessary to support an adverse order. Accordingly, I affirm the administrative order finding claimant ineligible for vocational assistance.

¹ At the convening time pursuant to Notice of Hearing, I telephoned claimant at the last known telephone number. The person who answered confirmed the phone number, indicated that claimant was unknown and that it was a new phone number at that residence. Moreover, on the date of hearing, claimant made no contact with the Hearing Officer Panel regarding any circumstances beyond his reasonable control that would justify his failure to appear.

ORDER

IT IS HEREBY ORDERED that:

The Administrative Order dated February 27, 2001 is affirmed.

DATED this 14th day of February 2002.

Catherine P. Coburn, Administrative Law Judge
Hearing Officer Panel