

In the Matter of the Vocational Dispute of

Campbell, Teddy, Claimant

Contested Case No: HH02-003

FINAL ORDER

July 3, 2002

GENERAL INSURANCE CO., Petitioner

TEDDY CAMPBELL, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

The Rehabilitation Review Unit (RRU) of the Workers' Compensation Division (WCD) issued a November 23, 2001 administrative order that found respondent had not misrepresented matters material to providing vocational assistance and that he was eligible for vocational assistance. Petitioner appealed RRU's order.

On March 20, 2002, Hearing Officer Paul Vincent conducted a telephone hearing. Attorney Robb Schoethoefer represented petitioner, General Insurance Co. (insurer). Respondent, Teddy Campbell (claimant), did not appear, but was represented by attorney Scott McNutt, Sr. The WCD waived appearance. Petitioner called Bruce McLean, vocational consultant.

On April 22, 2002, Hearing Officer Vincent issued a Proposed and Final Contested Case Hearing Order, which affirmed RRU's order. Petitioner filed exceptions to the Proposed and Final Contested Case Hearing Order on May 20, 2002. Respondent waived filing a response. Before the Director, the issue is claimant's eligibility to vocational assistance.

After considering the entire record, consisting of a tape recording of the hearing, all evidence received, all documents filed, and the arguments of the parties, the director adopts and affirms Hearing Officer Vincent's Proposed Order, with the following supplementation.

The insurer requests that, in the alternative if it does not prevail on the merits, the matter be remanded to afford it the opportunity to redetermine claimant's eligibility for vocational assistance based upon the receipt of new information. ORS 656.340(1)(c). OAR 436-120-0360 outlines the circumstances under which the insurer can redetermine eligibility. Because the insurer failed to show that claimant was working as a mechanic, there has not been a change of circumstances to warrant redetermination of claimant's eligibility for vocational assistance. Rather, RRU found that claimant's vocational assistance was ended before a determination could be made whether professional skills training for automotive service writer would be feasible. If service writer training or another viable training option is found, then claimant is eligible for training. Otherwise, claimant is eligible for direct placement services.

Because claimant prevailed at a contested case hearing, his attorney is entitled to a reasonable fee. ORS 656.385(1),(3). The factors to consider in awarding a fee are: time devoted to the case, complexity of the issue(s), quality of legal representation, value of the interest involved, nature of the proceedings, benefit secured for the claimant, risk that an attorney's

efforts may go uncompensated, assertion of frivolous issues or defenses, a statement of services, and any other relevant consideration deemed appropriate. OAR 436-001-0265.

Claimant's counsel submitted a fee request indicating approximately 6 hours expended and requesting a \$1,500 attorney fee. The issue of claimant's eligibility for vocational assistance was of average complexity. Claimant's counsel is a highly experienced workers' compensation attorney. Securing vocational assistance is a valuable interest and a significant benefit to claimant. Because the insurer had terminated claimant's eligibility for vocational assistance, there was a risk that claimant's counsel efforts may have gone uncompensated. This factor, however, is less significant considering that claimant had prevailed before RRU. The insurer did not object to claimant's counsel's statement of services. Accordingly, based on the factors of OAR 436-001-0265, claimant's counsel is awarded \$1,200 as a reasonable assessed attorney fee.

IT IS HEREBY ORDERED that the April 22, 2002 Proposed and Final Contested Case Hearing Order is affirmed.

Dated this ____ day of July 2002.

**MARY NEIDIG, DIRECTOR
DEPARTMENT OF CONSUMER
AND BUSINESS SERVICES**

By: _____
John Shilts, Administrator
Workers' Compensation Division