

In the Matter of ORS 656.340 Vocational Services Dispute of

Fitzsimonds, David, Claimant

Contested Case No: H01-057

PROPOSED & FINAL ORDER

March 8, 2002

DAVID FITZSIMONDS, Petitioner

MID CENTURY INSURANCE CO, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

Claimant appeals the Administrative Order issued on April 24, 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 January 18, 2002, Hearing Officer Paul Vincent conducted a telephone hearing in this matter. *Pro se* petitioner David Fitzsimonds (claimant) failed to appear. Respondent Mid Century Insurance Co. (insurer) was represented by attorney Peter Davis. 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 a *prima facie* case in the record to support the order reviewed.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 15 and insurer Exhibits A – 11C were received without objection.

FINDINGS OF FACT

Having reviewed the record, I adopt the findings of fact contained in the director's administrative order dated April 24, 2001.

CONCLUSIONS OF LAW AND REASONING

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

RRU found that pursuant to OAR 436-120-0005(8) claimant lacks a substantial handicap and is therefore ineligible for vocational assistance. The record supports RRU's conclusion that work is currently available to claimant that would provide suitable employment, and that the work exists in reasonable numbers in his local area. Consequently, I conclude that RRU correctly determined that claimant has no substantial handicap to employment and is ineligible for vocational assistance under OAR 436-120-0005(8).

ORDER

IT IS HEREBY ORDERED that:

The Administrative Order dated April 24, 2001 is affirmed.

DATED this 8th day of March 2002.

Paul Vincent
Hearing Officer
Hearing Officer Panel