
In the Matter of the Vocational Dispute of

Holmes, Steven, Claimant

Contested Case No: HH01-078

FINAL ORDER

October 31, 2002

RSG FOREST PRODUCTS/OLYMPIC DIVISION , Petitioner

STEVEN HOLMES, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

The Rehabilitation Review Unit of the Workers' Compensation Division issued a July 13, 2001 administrative order that found claimant had not refused an offer of suitable employment, that he was eligible for vocational assistance, and that his average weekly wage was \$450.52 per week. Employer appealed. Claimant cross-appealed alleging that his average weekly wage should be \$504.40 per week.

On November 29, 2001, Hearing Officer Ella D. Johnson conducted a telephone hearing. Attorney Scott Monfils represented petitioner, employer RSG Forest Products, Olympic Forest Products Division and its claims processing agent, Self-Insured Management Services, Inc. Respondent, claimant Steven Holmes, appeared and was represented by attorney Ronald A. Fontana. The Workers' Compensation Division waived appearance. The employer called no witnesses. Claimant, Nealy Holmes, and Adriane Navarrete testified on claimant's behalf.

On January 17, 2002, Hearing Officer Johnson issued a Proposed and Final Contested Case Hearing Order, which affirmed the administrative order that claimant was eligible for vocational assistance, but modified that portion of the order to find that claimant's weekly wage was \$598.98. The employer filed exceptions on February 19, 2002, and claimant timely responded on March 10, 2002.

The hearing officer may only modify the administrative order if it violates a statute or rule, exceeds the statutory authority of the agency, was made upon unlawful procedure, or was characterized by abuse of discretion or clearly unwarranted exercise of discretion. ORS 656.283(2)(c). Employer, as the moving party, bears the burden of showing that the administrative order should be modified on one of these grounds.

Employer excepts to various findings of fact in the proposed order on grounds including lack of foundation, lack of expertise, relevance, and insufficient evidence in the record. Employer further excepts to the conclusions of law and opinion. After reviewing the exceptions, the response, and the record, the director declines to modify the proposed order. *See* OAR 136-003-0665 (4); section 12, chapter 849, Oregon Laws 1999. The employer has not met its burden.

With his response to employer's exceptions, claimant's attorney submitted a statement of services requesting a fee of \$750 for 3.75 hours of time expended on the exceptions process. The issue of claimant's eligibility for vocational assistance was of average complexity. Claimant's counsel is an experienced workers' compensation attorney. Securing vocational assistance is a

valuable interest and a significant benefit to claimant. Because the employer had determined claimant ineligible for vocational assistance, there was a risk that claimant's counsel's efforts may have gone uncompensated. This factor, however, is less significant considering that claimant had prevailed in the administrative review process. The employer did not object to claimant's counsel's statement of services. Accordingly, based on the factors in OAR 436-001-0265, claimant's counsel is awarded \$750 as a reasonable, assessed attorney fee for services during the exceptions process.

IT IS HEREBY ORDERED THAT the January 17, 2002 Proposed and Final Contested Case Hearing Order is adopted and affirmed. Claimant's counsel is awarded an additional \$750 assessed attorney fee for services rendered on the exceptions process.

Dated this ____ day of October, 2002.

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

By: _____
John Shilts, Administrator
Workers' Compensation Division