

In the ORS 656.262(11) Penalty Dispute of

Jones, Larry R., Claimant

Contested Case No: H02-075

PROPOSED & FINAL ORDER

November 26, 2002

LARRY R. JONES, Petitioner

LANE COUNTY, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

HISTORY OF THE CASE

Claimant appeals an Administrative Order issued on July 1, 2002 by the Sanctions Unit of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (director or department). On October 23, 2002, Administrative Law Judge Catherine P. Coburn conducted a contested case hearing. Petitioner Larry R. Jones (claimant) was represented by attorney Dale C. Johnson. Responding self-insured employer, Lane County and its claims administrator, Pinnacle Risk Management Services, Inc. (insurer) were represented by attorney Brian L. Pocock. Insurer called Erika Schulz as a witness; no other witnesses testified. The record closed on the date of hearing.

The record of this proceeding, consisting of written argument, all evidence received, and all hearing papers filed, has been considered. The findings of fact and conclusions of law are based upon the entire record.

ISSUE

1. Whether a penalty is warranted for unreasonable delay in determining the extent of permanent disability.
2. Whether a penalty is warranted for unreasonable delay in payment of temporary disability benefits.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 9, claimant's Supplementary Exhibits A through I, and insurer's Supplementary Exhibits 10 and 11 were received into the record without objection. Claimant withdrew his proposed Supplementary Exhibits 10 and 11 as duplicates.

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

FINDINGS OF FACT

I adopt the findings of fact contained in the Administrative Order dated XXX with the following supplementation.

In XXX, insurer accepted a claim for

CONCLUSIONS OF LAW AND REASONING

The question whether is penalty is warranted is the sole issue presented. Jurisdiction lies with the director. ORS 656.262(11) and ORS 656.704XXX; OAR 436-060-0155XXX. Since ORS 656.262 prescribes no standard of review, I review *de novo*. *Archie M. Ulrich*, 2 WCSR 152, 153 (1997); OAR 436-010-0225(1)XXX. The burden of proving a fact or position rests with the proponent. ORS 184.450(2). As petitioner, insurer bears the burden of proving by a preponderance of the evidence that the administrative order is incorrect. See *Cook v. Employment Div.*, 47 Or 437 (1982) (In the absence of contrary legislation, the standard of proof in an administrative hearing is preponderance of evidence).

The Sanctions Unit determined that
Insurer first contends that
Insurer next contends
In support of its position, insurer argues that
In contrast, claimant contends that
Claimant further contends that

ATTORNEY FEES

Claimant has/has not prevailed in a contested case hearing, and therefore, is/is entitled to an attorney fee. ORS 656.385(1). **Mr. Johnson requested no attorney fee. i. e. 50%**

ORDER

IT IS HEREBY ORDERED that:

The Administrative Order dated July 1, 2002 is affirmed/reversed.

DATED this 26th day of October 2002.

Catherine P. Coburn
Administrative Law Judge
Hearing Officer Panel