
In the Matter of the Vocational Dispute of

Ozias, Craig , Claimant

Contested Case No: HH10-133

FINAL ORDER

June 11, 2002

SAIF CORPORATION, Petitioner

CRAIG OZIAS, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

On January 17, 2002, Hearing Officer Paul Vincent conducted a telephone hearing. Petitioner, SAIF Corporation (insurer), appeared through attorney Larry Schucht. Respondent Craig Ozias (claimant) appeared *pro se*. The Department of Consumer and Business Services, Workers' Compensation Division (WCD) waived appearance. Adele Bostwick, rehabilitation consultant, testified on behalf of the insurer. Claimant testified on his own behalf.

The respondent filed exceptions to Hearing Officer Vincent's March 8, 2002 Proposed and Final Contested Case Order, which found that the insurer was not required to determine claimant's eligibility for vocational assistance. SAIF Corporation timely responded. Before the Director, the issues are the admissibility of evidence and claimant's eligibility for vocational assistance. The entire record, consisting of a tape recording of the hearing, all evidence received, and all documents filed, has been considered.

I adopt and affirm the hearing officer's order with the following supplementation.

Evidentiary Ruling

The hearing officer noted that the record before him differed markedly from that before the Rehabilitation Review Unit (RRU) of the WCD. The hearing officer found that the additional evidence, subsequent to RRU's order, "significantly alters the balance of evidence as to whether claimant is capable of returning to regular employment in favor of the determination that he is." Consequently, the hearing officer reversed RRU's administrative order.

In his exceptions, claimant contended that because the insurer did not send him the January 16, 2002 supplemental exhibit list he was denied an opportunity to review the exhibits and to investigate and question all parties listed in those exhibits.

The insurer responded that the exhibits included evidence from Dr. Dickinson and from Ms. Bostwick. Claimant did not request, at any time during the hearing, the opportunity to consult with or obtain clarification from Dr. Dickinson. In addition, Ms. Bostwick testified at hearing and claimant had the opportunity to examine her. The insurer, therefore, contended that claimant waived any ability to challenge the admissibility of the disputed exhibits.

The admissibility of documentary or other evidence at hearing is generally a matter within the discretion of the hearing officer. Thus, the director reviews the hearing officer's

evidentiary ruling for abuse of discretion. *Bonneville Auto. Ins. Co. v. Insurance Division*, 53 Or App 440 (1981). *Brown v. SAIF*, 51 Or App 389, 394 (1981).

The RRU issued an administrative order on October 5, 2001 which ordered the insurer to determine claimant's eligibility for vocational assistance. In particular, based on the findings of the medical arbiter, RRU found that claimant was unable to return to regular employment. RRU considered records dating from November 15, 1999 to July 23, 2001 and a telephone call with claimant's attending physician, Dr. Dickinson, on September 10, 2001. (Ex. 22).

The insurer requested a contested case hearing on December 3, 2001 to appeal RRU's order. (Ex. 23). Hearing was scheduled for January 17, 2002. WCD exhibits 1 through 24 were mailed to the parties on December 26, 2001. These exhibits included the records before RRU plus RRU's order, the insurer's request for hearing, and a letter from Managed Healthcare Northwest to the insurer. On January 14, 2002, the insurer mailed a Supplemental Exhibit List, consisting of exhibit 25, to the hearing officer and to claimant. Claimant submitted his exhibits, 25A, 26 through 34, on January 15, 2002. On January 16, 2002, the insurer faxed its supplemental exhibit list, consisting of Exhibits 22A, 22B, 22C, 23A, to the hearing officer. The insurer mailed this supplemental exhibit list to claimant.

At hearing, the hearing officer informed claimant that objections to the evidence had to be made at the time the evidence was offered. The hearing officer also advised claimant that normally there was no opportunity at the end of the hearing to present additional evidence, but that he could request any time during the hearing to present additional evidence.

During the discussion of the exhibits, neither party objected to the WCD's exhibits. Claimant's exhibit submission was admitted. The hearing officer did not admit the insurer's exhibits 21A and 22A because they were duplicative. Claimant objected to the insurer's submission of exhibits 22A-C and 23A because he had not received them and, thus, had no opportunity to review them. Claimant had received the insurer's exhibit 25. The insurer had no objection to leaving the record open, but asserted that those documents had previously been provided to claimant as discovery. Because claimant had received copies of the challenged records, the hearing officer admitted the insurer's exhibits 22B, 22C, and 23A into the record. The hearing officer, however, advised claimant that, after claimant received exhibits 22B, 22C, and 23A, he was to call the hearing officer if he had not previously received those records. There is no evidence in the record that claimant contacted the hearing officer regarding these supplemental exhibits.

Exhibit 22B was a November 26, 2001 job analysis signed by Dr. Dickinson; exhibit 22C was a November 26, 2001 work release from Dr. Dickinson; exhibit 23A was a December 4, 2001 vocational eligibility evaluation conducted by Ms. Bostwick, vocational consultant, in response to RRU's order. Ms. Bostwick had met with Dr. Dickinson on November 26, 2001 at which time he reviewed a November 9, 2001 work capacity evaluation (WCE) and the videotaped job analysis. At that time, Dr. Dickinson released claimant to regular work and signed that job analysis. Claimant was unavailable to meet with Ms. Bostwick to review the videotaped job analysis and Dr. Dickinson's release for regular work. Ms. Bostwick concluded that claimant was not eligible for vocational assistance because he had been released to regular

work by Dr. Dickinson and he had no substantial handicap to employment. Although claimant had not received the insurer's January 16, 2002 supplemental exhibits by the time of hearing, he had previously received copies of these records.

There is no evidence in the record that claimant contacted the hearing officer posthearing regarding the disputed supplemental exhibits. The record otherwise establishes that claimant had previously received copies of the disputed exhibits. Claimant had not made himself available to review Dr. Dickinson's approval of the job analysis and the release to work prior to Ms. Bostwick's eligibility evaluation. He, however, had the opportunity to cross-examine Ms. Bostwick at the hearing regarding the videotaped job analysis. The hearing officer also questioned Ms. Bostwick to follow-up with claimant's line of questioning regarding the videotape job analysis. Under these circumstances, the hearing officer did not abuse his discretion in admitting the proffered exhibits.

The hearing officer gave greater weight to the more recent evidence because Dr. Dickinson had the benefit of reviewing a valid WCE and a videotaped job analysis. The hearing officer made a full and fair inquiry into the facts, as required by ORS 183.415(10).¹ His evaluation of the evidence should not be disturbed. *See Omey v. Senior and Disabled Services Div.*, 124 Or App 112, 115 (1993).

IT IS HEREBY ORDERED THAT: The March 8, 2002 Proposed and Final Contested Case Hearing Order is affirmed.

Dated this _____ day of June, 2002.

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

By: _____
John Shilts, Administrator
Workers' Compensation Division