

In the Matter of the ORS 656.245 Medical Services Dispute of

**Bailey, Von D., Claimant**

Contested Case No: H03-089

**PROPOSED AND FINAL ORDER**

October 16, 2003

VON D. BAILEY, Petitioner

ROYAL & SUN ALLIANCE, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

---

**HISTORY OF THE CASE**

Claimant appeals the administrative order issued on June 11, 2003 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (director or department). On October 1, 2003, Administrative Law Judge Catherine P. Coburn conducted a telephone hearing in Salem, Oregon. Petitioner Von D. Bailey (claimant) appeared *pro se* and testified on his own behalf. Respondent, Royal & Sun Alliance (insurer) was represented by attorney Kenna West. Insurer called no witnesses. The record closed on the date of hearing.

**ISSUE**

Whether MRU incorrectly determined that insurer is liable for reimbursement of out-of-pocket expenses in the amount of \$209.71.

**EVIDENTIARY RULINGS**

WCD Exhibits 1 through 48 were received without objection. Insurer's Supplementary Exhibit 49 was received into the record without objection. Claimant's Supplementary Exhibit 50 was received into the record over insurer's relevance objection. Claimant's Supplementary Exhibit 51-1 was received into the record without objection. I sustained insurer's relevance objection to claimant's Supplementary Exhibit 51-2 and it was not received into the record.

**FINDINGS OF FACT**

(1) On December 31 1996, claimant suffered left shoulder injury while working as a restaurant manager. (Ex. 1.) Insurer accepted left shoulder strain and left rotator cuff tear as compensable conditions. (Exs. 2 and 8.) In June 2001, claimant moved to Ohio. (Ex. 41; testimony of claimant.)

(2) On April 27, 2002, insurer paid claimant a \$1041.50 cash advance to finance a round-trip flight from Ohio to Portland plus meals and lodging for one day. (Exs. 16, 26 and 40.)

(3) On May 23, 2002, claimant underwent an independent medical examination (IME) in Portland, Oregon. (Ex. 17; testimony of claimant.)

(4) On June 12, 2002, claimant underwent a physical capacities evaluation (PCE) in Portland, Oregon. (Ex. 24; testimony of claimant.)

(5) When claimant received medical treatment in Portland, he stayed at his brother's house in Portland. (Ex. 41; testimony of claimant.)

(6) Insurer paid claimant for mileage from his brother's house in Portland to the independent medical examination and the physical capacities evaluation. (Exs 39 and 46.)

### CONCLUSIONS OF LAW

MRU correctly determined that insurer is liable for reimbursement of out-of-pocket expenses in the amount of \$209.71.

### OPINION

This case arises under ORS 656.245(1)(e), and therefore, jurisdiction lies with the director. ORS 656.704(3)(a). I review for substantial evidence or error of law. ORS 656.245(6). The burden of proving a fact or position falls upon the proponent. ORS 183.450(2). As petitioner, claimant bears the burden of proving by a preponderance of evidence that the administrative order is incorrect. *Cook v. Employment Div.*, 47 Or 437 (1982) (In the absence of legislation adopting a different standard, the standard of proof in an administrative hearing is preponderance of evidence). Proof by a preponderance of evidence means that the fact finder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989).

In the administrative order, MRU reviewed claimant's reimbursement for mileage, meals and lodging and determined that insured owed claimant \$209.71 additional. Claimant appealed and contends that he is owed \$3,335 over and above the amount MRU ordered. In support of his position, claimant argues that the \$3,335 represents two round-trips between Ohio and Portland, Oregon, or 4,900 miles at 34 cents per mile. In contrast, insurer contends that the administrative is correct and that it owes claimant nothing over and above the \$209.71 that MRU ordered it to reimburse.

ORS 656.245(1)(e) provides:

Except for services provided under a managed care contract, out-of-pocket expense reimbursement to receive care from the attending physician shall not exceed the amount required to seek care from an appropriate attending physician of the same specialty who is in a medical community geographically closer to the worker's home.

For the purposes of this paragraph, all physicians within a metropolitan area are considered to be part of the same medical community.

Claimant testified that he drove roundtrip from Ohio to Portland twice, once for the IME and again for the PCE. For the following reasons, I find this testimony not credible. First, the IME took place on May 23, 2002 and the PCE took place on June 12, 2002, only 20 days later. I find it implausible that a person would drive from Ohio to Portland, Oregon roundtrip twice within such a short period. In reaching this conclusion, I also consider the fact that claimant stayed at his brother's house when he was in Portland. Moreover, claimant offered no documentary evidence in the form of gas, lodging or restaurant receipts to establish that these road trips occurred. Finally, insurer paid a cash advance to claimant for a roundtrip flight from Ohio to Portland, Oregon before the IME and also paid mileage reimbursement from his brother's house to the IME and PCE in Portland. Based on the record, I find that claimant has failed to carry his burden of proving by a preponderance of evidence that the administrative order is incorrect. Therefore, I affirm.

### **ORDER**

IT IS HEREBY ORDERED that:

The Directors Review and Order dated June 11, 2003 is affirmed.

DATED this 16<sup>th</sup> day of October 2003.

---

Catherine P. Coburn,  
Administrative Law Judge  
Office of Administrative Hearings