

In the Matter of the ORS 656.245 Medical Services Dispute of

Egan, Gerard, Claimant

Contested Case No: H03-038

PROPOSED & FINAL ORDER

December 17, 2003

GERARD EGAN, Petitioner

SAIF CORPORATION, Respondent

Before Ray Myers, Administrative Law Judge, Office of Administrative Hearings

HISTORY OF THE CASE

Gerard Egan (claimant) appeals a May 13, 2003 Administrative Order issued by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (the director or the department), which determined that SAIF Corporation (SAIF or the insurer) is not liable to reimburse claimant for certain expenses claimed to be related to the compensable claim. On June 18, 2003, the matter was referred to the Office of Administrative Hearings (OAH) for hearing

On August 13 2003, Administrative Law Judge (ALJ) Paul Vincent conducted a telephone hearing in this matter in Salem, Oregon. Attorney Jeremiah Scannel represented Mr. Egan. Attorney Michael Fetrow represented SAIF. WCD waived appearance. Julie Lesmeister testified on behalf of SAIF. Mr. Egan testified on his own behalf. The record closed following the hearing.

After the hearing, the OAH assigned the matter to Administrative Law Judge Ray Myers to review the record and to write this order. The record of this proceeding, consisting of tape recordings of the hearing, 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.

ISSUES

1. Is SAIF liable for reimbursing Mr. Egan for lodging expenses for August 6, 7, 8, 9, 10, 12, 17 and 22, 2002?
2. Is SAIF liable for reimbursing Mr. Egan for hotel costs of a maximum of \$99 per night plus tax for the period August 6 through August 22, 2003?¹
3. Is SAIF liable for reimbursing Mr. Egan for foot powder for his accepted claim?
4. Is SAIF liable for reimbursing Mr. Egan for the cost of airport luggage carts used during a trip from his home in Guam to San Diego to have a new prosthetic fitted?

¹ SAIF has reimbursed Mr. Egan for hotel costs for all days during this period except those listed in Issue 1. Thus, the issue is whether SAIF is liable for additional amounts for days reimbursed as well as for \$99 plus tax for the dates for which SAIF has not reimbursed Mr. Egan.

5. Is SAIF liable for reimbursing Mr. Egan for tips made in connection with restaurant meals for which SAIF provided the maximum reimbursement?

Evidentiary Ruling

The record consists of Exhibits 1 through 16, plus SAIF's Exhibits 4A and 4B and Petitioner's Exhibit 1 (submitted with petitioner's brief and consisting of seven page), which were admitted into the record without objection.

FINDINGS OF FACT

I adopt MRU's Findings of Fact with the following supplementation:

1. Mr. Egan suffered a compensable injury while working for SAIF's insured on November 8, 1975. (Ex. 1.) Mr. Egan traveled from his home in Guam to San Diego, California on August 6, 2002² to have a new leg prosthesis fitted. He returned to Guam on August 23, 2002. Mr. Egan incurred \$3,472.07 in expenses during his trip, for which he sought reimbursement from SAIF. (Ex 4A.) The only receipts submitted by Mr. Egan that SAIF received for the period in issue are those in Exhibit 4A. (Test. of Lesmeister.) SAIF reimbursed Mr. Egan \$2,417.01. (Ex. 4B.)

2. Mr. Egan submitted receipts for hotel costs for all dates between August 6 and August 22 except August 6, 7, 8, 10, 12 and 17. (Ex. 4A.) Mr. Egan did submit a receipt showing charges, but not room charges, associated with a particular room in a hotel for August 6. (Ex. 4A-8.)

CONCLUSIONS OF LAW

1. SAIF is not liable for reimbursing Mr. Egan for lodging expenses for August 6, 7, 8, 9, 10, 12, 17 and 22, 2002.

2. SAIF is liable for reimbursing Mr. Egan for hotel costs of a maximum of \$99 per night plus tax for the period August 6 through August 22, 2003.

3. SAIF is not liable for reimbursing Mr. Egan for foot powder for his accepted claim.

4. SAIF is not liable for reimbursing Mr. Egan for the cost of airport luggage carts used during a trip from his home in Guam to San Diego to have a new prosthetic fitted.

² MRU found that Mr. Egan's trip began on August 2, 2003; however, because no evidence supports that finding, I conclude that MRU made a scrivener's error. In addition, Mr. Egan stated in his letter to SAIF requesting reimbursement (Exhibit 4A) that the trip began on August 8, 2003. However, Mr. Egan claimed expenses beginning August 6, 2003 and enclosed receipts beginning that date with his request for reimbursement. Therefore, I conclude that he, too, made a scrivener's error. August 6 appears to be the correct date the trip began.

5. SAIF is not liable for reimbursing Mr. Egan for tips made in connection with restaurant meals for which SAIF provided the maximum reimbursement?

OPINION

The Director has jurisdiction over medical disputes arising under ORS 656.245(1) in cases where compensability of the condition to which medical services are directed is not at issue. OAR 436-010-0008(3), (4).

The expenses in issue are alleged to be reimbursable under ORS 656.245(1)(a), which states:

(1)(a) For every compensable injury, the insurer or the self-insured employer shall cause to be provided medical services for conditions caused in material part by the injury for such period as the nature of the injury or the process of the recovery requires, subject to the limitations in ORS 656.225, including such medical services as may be required after a determination of permanent disability. In addition, for consequential and combined conditions described in ORS 656.005 (7), the insurer or the self-insured employer shall cause to be provided only those medical services directed to medical conditions caused in major part by the injury.

Pursuant to ORS 656.327(2) and ORS 656.245(6), I review MRU's decision for substantial evidence and errors of law. Substantial evidence review involves determining whether, when viewed as a whole, the record contains evidence that would make MRU's decision reasonable. *Armstrong v. Asten-Hill Co.*, 90 Or App 200, 206 (1988). The party seeking to overturn the agency's order bears the burden of proving that there was not substantial evidence to support the agency's order. ORS 183.450(2). As the Court of Appeals recently said, the party seeking to reverse an agency's decision on substantial evidence grounds "faces a daunting standard of review." *Webb v. Glennbrook Nickel Co.*, ___ Or App ___ (August 13, 2003).

Lodging Reimbursement

MRU found that Mr. Egan had not provided receipts to document lodging costs for August 6, 7, 8, 9, 10, 12, 17 and 22, 2002. It then concluded that SAIF is not liable for reimbursing expenses for those dates. OAR 436-009-0025 controls the method for seeking reimbursement for expenses related to obtaining medical treatment. It states in relevant part:

(1) The insurer shall notify the worker at the time of claim acceptance that actual and reasonable costs for travel, prescriptions, and other claim-related services paid by the worker will be reimbursed by the insurer upon request. The insurer may require reasonable documentation to support the request.

(2) Reimbursement of the costs of meals, lodging, public transportation and use of a private vehicle reimbursed at the rate of reimbursement for State of Oregon classified employees, as published in Bulletin 112, complies with this section.

In addition, OAR 436-010-0270(7) provides: “Insurers shall reimburse workers for actual and reasonable costs for travel, prescriptions, and other claim related services paid by a worker in accordance with ORS 656.245(1)(e), 656.325, and 656.327.]

Mr. Egan has not provided reasonable documentation of his lodging expenses for August 6, 7, 8, 9, 10, 12, 17 and 22, 2002 as SAIF required. Therefore, I conclude that there is substantial evidence to support MRU conclusion that SAIF is not liable for reimbursing Mr. Egan for lodging for those dates.

Lodging Tax

MRU found that SAIF was liable for reimbursing Mr. Egan a maximum of \$99 per night for lodging costs. Mr. Egan contends that he is also entitled to reimbursement for lodging tax. SAIF concedes under Bulletin 112, Mr. Egan is so entitled. Therefore, I conclude that MRU made an error of law in not allowing reimbursement for lodging tax.

Foot Powder

On review, I conclude that SAIF is not liable for reimbursing Mr. Egan for foot powder. As the party bearing the burden of proof, Mr. Egan has the burden of establishing under ORS 656.245 that the foot powder is required to treat the compensable condition. At the time of his request for reimbursement, Mr. Egan provided no documentation explaining why foot powder is reasonably related to his claim. Therefore, I conclude that Mr. Egan has failed to sustain his burden of proof. There is substantial evidence to support MRU’s decision on this issue.

Luggage Carts

On review, I conclude that SAIF is not liable for reimbursing Mr. Egan for the cost of luggage carts at the airport. As the party bearing the burden of proof, Mr. Egan has the burden of establishing under ORS 656.245 that the luggage carts are required for him to receive medical treatment. MRU found that Mr. Egan had not sustained his burden of proof. I agree. There is no evidence in the record before MRU that establishes the necessity for renting luggage carts to obtain treatment.

Tips

Mr. Egan contends that he is entitled to receive up to the maximum meal rate, plus tips. SAIF has included tips in reimbursing Mr. Egan for meals, but where his meals meet or exceed the maximum rate, it has not paid tips in addition. Unlike lodging tax, Bulletin 112 is silent concerning tips. MRU found that SAIF is not liable for tips in addition to the maximum meal rate. I conclude that under Bulletin 112, MRU’s conclusion is reasonable. Therefore, I conclude that MRU did not make an error of law in allowing SAIF to exclude tips from reimbursement.

ATTORNEY FEES

Mr. Egan has prevailed on the room tax issue, therefore, [pursuant to] claimant has prevailed and is therefore entitled to attorney fees. ORS 656.385(1). Applying the factors set forth in OAR 436-001-0265, I find that claimant's counsel is entitled to an assessed fee in the amount of \$1,515.

ORDER

IT HEREBY ORDERED that MRU's Administrative Order dated May 13, 2003 is affirmed in part and reversed in part. That portion of MRU's order that found that SAIF is not liable for room tax in addition to the maximum lodging rate is reversed. The balance of MRU's order is affirmed.