

In the Matter of the ORS 656.340 Vocational Assistance Dispute of

**Faust, Ronald C., Claimant**

Contested Case No: H03-003

**FINAL ORDER**

June 24, 2003

RONALD C. FAUST, Petitioner

LUMBERMAN'S MUTUAL INSURANCE CORPORATION, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

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Administrative Law Judge (ALJ) Coburn<sup>1</sup> issued a Proposed and Final Contested Case Hearing Order by default on March 11, 2003, reversing the November 6, 2002 Director's Review and Order on the basis that an error in interpreting the facts constituted an abuse of discretion.<sup>2</sup>

Kemper Insurance filed exceptions on March 28, 2003 raising a number of arguments, including a request to reopen the record. Claimant responded on April 4, 2003. On April 14, 2003, Kemper replied to claimant's response, and on April 30, 2003, claimant responded to the reply.<sup>3</sup>

**ISSUE**

The issue is the effect of the timing of the parties' Claims Disposition Agreement (CDA) on the insurer's obligation to pay claimant's spring tuition expenses as part of claimant's vocational assistance.<sup>4</sup> The director concludes that once the CDA was submitted to the Board and subsequently approved, insurer's obligation to provide vocational assistance benefits, including outstanding expenses, ceased.

**FINDINGS OF FACT**

The director accepts the ALJ's findings of fact, which are as follows:

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<sup>1</sup> HB 2526 (2003), which changes the title of the Hearing Officer Panel to the Office of Administrative Hearings, and the titles of the Hearing Officers to Administrative Law Judges, was signed by the Governor on May 22, 2003, and became effective upon passage.

<sup>2</sup> The ALJ cited no authority in support of her conclusion that a factual error amounts to an abuse of discretion.

<sup>3</sup> The parties are generally limited to exceptions, a response, and a reply. *See* OAR 436-001-0275 and the division's April 4, 2003 letter to the parties. Accordingly, correspondence subsequent to the April 14, 2003 reply has not been considered.

<sup>4</sup> Claimant defines the issue as whether he is entitled to expenses incurred pursuant to the approved training plan before the CDA was drafted and submitted to the Board. Based on the director's disposition, as explained below, it is irrelevant when the expenses were incurred.

(1) On November 5, 1998, claimant suffered a lumbar injury while working as a manufacturing account engineer. Insurer accepted L5-S1 and L4-5 disc herniations as compensable conditions. (Exs. 1, 2, and 3.)

(2) On February 28, 2000,<sup>5</sup> the claim was closed with a 17 percent unscheduled permanent partial disability award. (Ex. 2.)

(3) On October 23, 2001, claimant and insurer entered into a Return-to-Work Plan specifying that claimant would undergo formal training at the University of Oregon from January 7, 2002 through September 5, 2003. The agreement states, "Worker will attend all classes as scheduled and complete all assignments on time. Counselor will be notified with 1 working day if training is missed for any reason." Above claimant's signature, the agreement further states, "I understand my responsibilities under this plan and have received a copy of the plan support and both sides of this form. I understand that the Workers' Compensation Division may review the plan. My signature authorizes the training facility to release grades to my counselor and insurer." The Return-to-Work Plan is also signed by Anami Ridge, Plan Developer and Paula J. Blanchette, insurer's claims manager. (Ex. 4.)

(4) On March 14, 2002, claimant registered for classes. On March 31, 2002, claimant purchased books and supplies for Spring Term from the University of Oregon bookstore. On April 1, 2002, claimant began attending classes. (Testimony of claimant.)

(5) On March 25, 2002, claimant's tuition and matriculation fees became due and payable. (Ex. 11-5.)<sup>6</sup>

(6) For Spring Term, 2002, claimant incurred \$1,480.52 in educational expenses consisting of \$1,055.90 tuition, \$224.62 books and supplies and \$200 matriculation fee. Claimant charged the books and supplies on his personal credit card. (Exs. 11 and 12; testimony of claimant.)

(7) On April 11, 2002, the Workers' Compensation Board received a Claims Disposition Agreement (CDA) executed by the parties. On April 18, 2002, the Board approved the CDA. (Ex. 6.)

(8) On May 31, 2002, insurer canceled payment of \$1,055.90 of claimant's fees. On April 15, 2002, insurer canceled payment of \$311.10 of claimant's fees. (Ex. 12.)<sup>7</sup>

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<sup>5</sup> The ALJ's finding says February 28, 2000, but it appears the correct date is actually February 8, 2000.

<sup>6</sup> Page 5 of Exhibit 11, on its face, reveals that insurer was sent an invoice for claimant's *Winter* Term (1/7/01 through 3/23/02) tuition and matriculation fees on March 25, 2002. At issue here is claimant's Spring Term tuition and fees.

<sup>7</sup> This finding appears to conflict with finding number 10, that insurer had paid none of claimant's Spring Term expenses. However, because this fact is not dispositive, the director declines to modify it. *See* Or. Laws 1999, ch. 849, sec. 12 (2) and (3), OAR 137-003-0665 (3) and (4) regarding agency modification of ALJ's finding of historical fact.

(9) On July 1, 2002, claimant paid the tuition and matriculation fees to the University of Oregon in order to protect his personal credit. (Testimony of claimant.)

(10) To date, insurer has paid none of claimant's Spring Term educational expenses. (Testimony of claimant.)

The director also makes the following supplemental finding:

(11) The express terms of the CDA provide that claimant fully released vocational assistance benefits, and that

“[i]n consideration for this payment, the claimant shall release all *present and future rights to \*\*\* vocational rehabilitation benefits \*\*\* and all other workers' compensation benefits that may have otherwise accrued* to the claimant or his survivors as a result of this claim \*\*\*. The claimant understands that as a result of this agreement, the employer/insurer is *no longer obligated to provide workers' compensation benefits to him as a result of this claim* other than for medical benefits as required by ORS 656.245, and for whatever assistance from the Re-employment Assistance Reserve for which he may be qualified \*\*\*. The claimant further understands that this agreement *releases the employer/insurer from responsibility for said benefits payable* for all conditions that are presently compensably related to this claim \*\*\*.”

(Emphasis added. Ex. 6-1, 6-3, 6-4).

## CONCLUSIONS OF LAW

Kemper Insurance filed exceptions to the ALJ's proposed order on March 28, 2003. Kemper raises several arguments in renewing its request to reopen the record, objecting to claimant's attorney's statement of services, and arguing that the ALJ failed to interpret the evidence. Kemper also submitted additional evidence with its exceptions. The director denies Kemper's motion to reopen the record; declines to consider post-hearing argument about interpretation of facts in the record; and declines to consider facts not in the record. Kemper's remaining arguments need not be addressed in light of the director's disposition of this matter, explained below.

Claimant responded to Kemper's exceptions on April 4, 2003, and Kemper replied on April 14, 2003. Insofar as Kemper's reply contains additional facts not in the record, it is not considered. On April 30, 2003, claimant responded to Kemper's reply. As noted above, correspondence subsequent to the April 14, 2003 reply is also not considered.

The issue is the effect of the submission and approval of the parties' CDA on the

insurer's obligation to pay for vocational assistance benefits.

ORS 656.236(1)(a) provides, in part,

“Unless otherwise specified, a disposition *resolves all matters and all rights to compensation*, attorney fees and penalties *potentially arising out of claims*, except medical services, regardless of the conditions stated in the agreement. \*\*\* *Submission of a disposition shall stay all other proceedings and payment obligations*, except for medical services, on that claim.”

(Emphasis added.)

ORS 656.236(7) goes on to provide, in part, that “no order in any subsequent proceedings may alter the obligations of an insurer or self-insured employer set forth in an approved claims disposition agreement, except as those obligations concern medical services.”

Claimant argues that insurer's payment obligations after the date the CDA was submitted are indeed stayed, but that costs incurred before submission of the CDA are not stayed. No such distinction is found in the text of the statute, however. “Submission of a [CDA] shall stay all other proceedings and payment obligations,” regardless of when they arose. Once the CDA is approved, all matters and all rights to compensation (except medical services) are resolved. The insurer no longer has an obligation to pay outstanding expenses unless those expenses are otherwise specified. The terms of the CDA provide that insurer is released from responsibility for benefits and is no longer obligated to provide benefits to claimant. No exception is made for vocational assistance expenses incurred before the CDA. Moreover, no subsequent order may alter insurer's obligations as set forth in an approved CDA. The CDA did not provide for Spring Term tuition expenses, and the director cannot now order insurer to pay those expenses.

The Oregon Supreme Court has interpreted ORS 656.236(1) language in *Rash v. McKinstry Co.*, 331 Or 665 (2001) (CDA did not specifically preserve insurer's lien rights against claimant's third party recovery in tort action). The court held that the phrase “all matters \*\*\* potentially arising out of claims” encompasses an insurer's statutory lien. “[A] CDA resolves all matters that, in the future, could arise out of a claim, not merely the matters currently known to arise out of a claim.”

Claimant's vocational assistance training and related expenses were known to have arisen from his workers' compensation claim. Under the plain meaning of ORS 656.236 and the court's reasoning in *Rash v. McKinstry*, a CDA resolves all matters that arise out of a claim, regardless of when they were incurred.

#### **ATTORNEY FEES**

Because claimant has not prevailed, he is not entitled to an attorney fee award. ORS

656.385(1).

IT IS HEREBY ORDERED that the March 11, 2003 Proposed and Final Contested Case Hearing Order is reversed. Insurer is not liable for claimant's Spring Term 2002 tuition and related expenses.

DATED this 24<sup>th</sup> day of June, 2003.

**CORY STREISINGER, DIRECTOR  
DEPARTMENT OF CONSUMER  
AND BUSINESS SERVICES**

By: \_\_\_\_\_  
John Shilts, Administrator  
Workers' Compensation Division