
In the Matter of the ORS 656.340 Vocational Services Dispute of

Corey Spikes, Claimant

Contested Case No: H03-022

PROPOSED AND FINAL ORDER

April 18, 2003

COREY SPIKES, Petitioner

SAIF CORPORATION, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

HISTORY OF THE CASE

Claimant appeals the Administrative Order issued on February 7, 2003 by the Rehabilitation Review Unit (RRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (director or department) determining that he is ineligible for vocational services. On April 16, 2003, Administrative Law Judge Catherine P. Coburn conducted an in-person hearing in this matter. *Pro se* petitioner Corey Spikes (claimant) failed to appear. Respondent SAIF Corporation (insurer) was represented by attorney Jill Gragg. WCD waived appearance.

The record of this proceeding, consisting of a tape recording of the hearing, all evidence received, and all hearing papers filed, has been considered. The findings of fact set out below are based upon the entire record.

ISSUE

The issue is whether insurer established a *prima facie* case in the record to support its denial of vocational services.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 21 and insurer's Supplementary Exhibit 4A were received into the record without objection. I also include the file as evidence in the record.

FINDINGS OF FACT

I adopt and incorporate the findings of fact contained in the administrative order dated February 7, 2003 with the following supplementation:

(1) On July 26, 2000, claimant suffered a compensable injury while working as a logger and earning \$12.50 per hour. (Ex. 1). Insurer accepted left pneumothorax, left shoulder fracture/dislocation with Hill-Sach's deformity and fracture of left posterior ribs 8, 9, and 10. (Ex. 15-4). On March 1, 2001, Luis Vela, D.O. performed surgical repair of the left shoulder. (Ex. 2.) On September 5, 2001, Dr. Vela released claimant to modified duty for four weeks. (Ex. 3.)

(2) In September 2001, insurer referred claimant to Nancy Bloom, Certified Vocational Consultant to evaluate claimant's eligibility for vocational assistance. (Ex. 4.) On January 22, 2002, Susan Bottomley, O.T.R. conducted a work capacity evaluation and determined that claimant was able to return to his job at injury as outlined in the job analysis. (Ex. 7-4) On March 28, 2002, Dr. Vela agreed. (Ex. 10.) On March 15, 2002, Bloom recommended that claimant be considered ineligible for vocational assistance because he was able to perform heavy logging work and lacked a substantial handicap to employment. (Ex. 11.)

(3) On October 11, 2002, claimant returned to work as a logger with the employer at injury earning \$12.50 per hour. (Exs. 16-1, 18-1 and 19-1.) He continued working until December 16, 2002 when he failed to appear for work. (Exs. 16 and 19.)

CONCLUSIONS OF LAW AND REASONING

Jurisdiction lies with the Director. ORS 656.340(4). In reviewing the administrative order, I may admit evidence which was not before RRU and make independent findings of fact. *Colclasure v. Washington County School District No. 48-J*, 317 Or 526, 537 (1993); *Joseph A. Richard*, 1 WCSR 3 (1996).

Pursuant to OAR 137-003-0670, when a party is notified of the time and place of the hearing and fails to appear for hearing for reasons not beyond that party's reasonable control, an adverse order may be entered only upon a *prima facie* case on the record. The hearing officer may consider whether the record contains evidence that persuades her of the existence of facts necessary to support the order. Claimant was notified of the time of the hearing¹ but failed to appear². I now consider whether the record contains facts establishing a *prima facie* case.

In the administrative order, RRU determined that claimant was ineligible for vocational assistance because he returned to suitable work with the employer at injury for at least 60 days. I agree.

¹ The file contains a certified return receipt establishing that claimant received the Notice of Hearing.

² I convened the hearing at 9:40 a.m., 40 minutes past the convening time. Furthermore, claimant has not contacted the Hearing Officer Panel to report any circumstances that might constitute circumstances beyond his reasonable control and excuse his failure to appear.

Under ORS 656.340(1)(a), the insurer is obligated to provide vocational assistance to injured workers who are eligible. In order to qualify as eligible for vocational assistance, an injured worker must be unable to return to regular work. OAR 436-120-0320(2)(b)³. Furthermore, if an injured worker returns to regular or suitable work for more than 60 days, he is ineligible for vocational services. OAR 436-120-0350(4).⁴ Here, claimant returned to logging work with the employer at injury earning the pre-injury wage for more than 60 days. Therefore, he is ineligible for vocational assistance.

In conclusion, I find that insurer established a *prima facie* case on the record to support its denial of vocational services and the record contains facts necessary to support an adverse order. Accordingly, I affirm the administrative order finding claimant ineligible for vocational assistance.

ORDER

IT IS HEREBY ORDERED that:

The Administrative Order dated February 7, 2003 is affirmed.

DATED this 18th day of April 2003.

Catherine P. Coburn, Administrative Law Judge
Hearing Officer Panel

³ OAR 436-120-0320(2)(b) provides:

(2) The insurer is not required to determine eligibility if:

(b) The worker has returned to regular or other suitable employment with the employer at injury or aggravation;

⁴ OAR 436-120-0350(4) provides:

A worker is ineligible or the worker's eligibility ends when any of the following conditions apply:

(4) The worker has been employed at least for 60 days in suitable employment after the injury or aggravation and any necessary worksite modification is in place.