

In the Matter of the Vocational Assistance Dispute of

Daniel J. Davison, Claimant

Contested Case No: H03-069

FINAL ORDER

August 19, 2004

CNA CLAIMS PLUS, Petitioner

DANIEL J. DAVISON, Respondent

Before John Shilts, Administrator, Workers' Compensation Division

This matter comes before the director for issuance of a Final Order. Office of Administrative Hearings Administrative Law Judge (ALJ) Catherine P. Coburn issued a Proposed and Final Contested Case Hearing Order dated June 10, 2004. The parties, respondent claimant by and through his attorney George J. Wall and petitioner employer by and through its attorney Matthew F. Denley, agree that the finding as to claimant's wage is incorrect and a corrected order should be issued.

The ALJ found: "Claimant's average weekly wage (AWW) on the date of aggravation was \$249.30 per week or \$6.50 per hour working 39 hours per week. (Ex. 21-6)." (Proposed order, page 2.) The Director's Review and Order of May 23, 2003, cited by the ALJ in support of her finding, states in relevant part,

"* * * Mr. Davison's adjusted weekly wage (AWW) is \$311.62. A suitable wage, for the purpose of determining his eligibility, is 80 percent of his AWW or \$249.30 per week (or \$6.50 per hour working 39 hours per week.)"

(Ex. 21-6.) The ALJ found that claimant's average weekly wage was \$249.30. Rather, \$249.30 per week is the suitable wage¹ based on claimant's adjusted weekly wage.²

The director modifies³ the ALJ's finding of fact to provide:

(5) Claimant's adjusted weekly wage is \$311.62. (Ex. 21-6.)

¹ Under OAR 436-120-0005(10) (eff. 5/15/01), "suitable wage" means, "(a) For the purpose of determining eligibility for vocational assistance, a wage at least 80 percent of the adjusted weekly wage."

² The adjusted weekly wage is based on the worker's average weekly wage, and is calculated under the method provided in OAR 436-120-0007.

³ See ORS 183.650(3) and OAR 137-003-0665(4) regarding agency modification of an ALJ's finding of historical fact.

The parties raise no other issues. The June 10, 2004 Proposed and Final Contested Case Hearing Order is therefore adopted and affirmed with the one correction.

IT IS SO ORDERED.

DATED this 19th day of August, 2004