
In the ORS 656.260 Managed Care Dispute of

LANCE L. BOWLING, Claimant

Contested Case No: H05-090

PROPOSED AND FINAL ORDER

September 12, 2005

LANCE L. BOWLING, Petitioner

SAIF CORP. , Respondent

Before Catherine P. Coburn, Administrative Law Judge, Administrative Hearings

HISTORY OF THE CASE

Claimant appeals the Administrative Order issued on June 9, 2005 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (department or director). On June 30, 2005, the department referred the matter to the Office of Administrative Hearings (OAH). On August 3, 2005, Administrative Law Judge Catherine P. Coburn conducted a hearing in Beaverton, Oregon. Attorney Keith Semple represented petitioner Lance L. Bowling (claimant). Attorney Jerome P. Larkin represented respondent SAIF Corporation (insurer). Oregon Health Systems (MCO) waived appearance. No witnesses testified and the record closed on the date of hearing.

ISSUE

Whether MRU correctly determined that claimant untimely requested administrative review of a medical fee dispute.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 50 were admitted into the record without objection.

FINDINGS OF FACT

(1) On May 8, 2002, claimant suffered a compensable injury while working as a utility installer. (Exs. 1 and 2.) Insurer accepted a cervical strain and a C6-6 disc herniation and enrolled claimant in an MCO. (Exs. 4, 25 and 32.)

(2) On October 23, 2003, claimant underwent a physical capacities evaluation (PCE) in preparation for claim closure. (Ex. 9.) On November 10, 2003, claimant notified insurer that he had suffered a new injury while participating in the PCE and requested insurer to investigate inclusion of the new injury in the claim. (Ex. 16.)

(3) On October 31, 2003, Kathleen R. Moore, MD prescribed physical therapy. (Exs. 12 and 13.) Rebound Physical Therapy provided medical services to claimant in November 2003. (Exs. 14, 15, 17.)

(4) On December 18, 2003, insurer notified claimant's attorney by telephone that it

declined to pay certain medical bills. On December 30 2003, claimant's attorney requested a written explanation identifying which bills were denied and the reason. (Ex. 21.)

(5) On January 6, 2004, insurer notified claimant that it disallowed payment of the physical therapy provided from November 4 through November 20, 2003. (Ex. 22.)

(6) On February 2, 2004, claimant requested insurer to provide copies of all physical therapy billings, a payment summary and an explanation of any disallowed bills. (Ex. 24.) On February 12, 2004, insurer provided copies of all physical therapy billings and an explanation of the disallowed billing for dates of service November 4 through November 20, 2003. Insurer disallowed these bills under code 32, which denotes that the services are not related to a compensable condition. (Exs. 26 and 27.)

(7) On February 27, 2004, claimant requested insurer to expand the scope of acceptance to include lumbar and/or cervical strains, stemming from the PCE incident. (Ex. 28.) On March 18, 2004, insurer denied compensability of lumbar and cervical strains. (Ex. 30.)

(8) On June 25, 2004, WCB ALJ Holly J. Somers ruled that the new injury was not compensable and that WCD had jurisdiction over the medical fee dispute as related to the accepted cervical conditions. (Ex. 33-10.)

(9) On July 23, 2004, claimant requested administrative review of the unpaid physical therapy bills. (Ex. 34.)

CONCLUSION OF LAW

MRU correctly determined that claimant untimely requested administrative review of a medical fee dispute.

OPINION

The director exercises jurisdiction over MCO disputes. ORS 656.260(6). I review for substantial evidence and error of law. ORS 656.260(16). The burden of proving a fact or position rests with the proponent. ORS 183.450(2); *Harris v. SAIF*, 292 Or 683 (1982). 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 App 437 (1980) (In the absence of contrary legislation, the standard of proof in administrative hearings is preponderance of evidence). Preponderance of evidence means that the factfinder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989).

MRU applied OAR 436-009-0008(2)(b) and determined that claimant untimely requested administrative review of insurer's nonpayment of certain physical therapy bills. Claimant contends that subsection (2)(d) properly applies and that he requested review timely. In support of his position, claimant argues that insurer denied causation and that initial jurisdiction lay with

the Workers' Compensation Board (WCB) rather than WCD. In contrast, insurer contends that the administrative order is correct and should be affirmed.

OAR 436-009-0008(2) provides in pertinent part:

(2) The medical provider, injured worker, or insurer may request review by the director in the event of a dispute about either the amount of a fee or non-payment of bills for medical services on a compensable injury. The following time frames and conditions apply to requests for administrative review before the director under this rule:

(b) For all claims not enrolled in an MCO, or for disputes which do not involve an action or decision of the MCO, the aggrieved party must request administrative review by the director within 90 days of the date the party knew, or should have known, there was a dispute over the provision of medical services. This time frame only applies if the aggrieved party other than the insurer is given written notice that they have 90 days in which to request administrative review by the director. When the aggrieved party is a represented worker, and the worker's attorney has given written notice of representation, the 90 day time frame begins when the attorney receives written notice or has actual knowledge of the dispute. For purposes of this rule, the date the insurer should have known of the dispute is the date action on the bill was due pursuant to OAR 436-009-0030. Filing a request for administrative review under this rule may also be accomplished in the manner prescribed in OAR chapter 438, division 005.

(d) When there is a formal denial of the underlying condition or a denial of the causal relationship between the medical service and the accepted condition, the issue must first be decided by the Hearings Division of the Workers' Compensation Board.

In construing the meaning of an administrative rule, I apply the same method of analysis employed in determining the meaning of a statute. *Abu-Adas v. Employment Dept.*, 325 Or 480 (1997); *Larry Hemenway*, 5 WCSR 33 (2000). See also *PGE v. Bureau of Labor and Industries*, 317 Or 606 (1993) (court's task in determining the legislative intent is to first examine the statute, including text and context, and if the intent is clear, to proceed no further with its analysis.) Where an agency's interpretation of its own rule is plausible and not inconsistent with the wording of the rule itself, the rule's context or with any other source of law, there is no basis for asserting that the rule has been misinterpreted by the agency. *Don't Waste Oregon Com. v. Energy Siting Council*, 320 Or 132 (1994).

Here, MRU applied OAR 436-009-0008(2)(b)¹ and dismissed the matter because claimant failed to request administrative review within 90 days of his knowledge of a medical fee dispute. Claimant contends that he requested review timely under subsection (2)(d) because insurer denied compensability of a new injury. However, the text of subsection (d) is written in the present tense and it applies only “when” there is a formal denial of the underlying condition or a denial of the causal relationship between the medical service and the accepted condition. Here, the chronology does not support claimant’s position because insurer denied the new injury claim after claimant was notified of the medical fee dispute. Claimant was aware of a medical fee dispute on January 6, 2004 and insurer denied the new injury claim on March 18, 2004. Consequently, subsection (2)(d) is inapplicable. Rather, claimant was required by subsection (2)(b) to request administrative review within 90 days of January 6, 2004 and failed to do so. Therefore, MRU correctly dismissed the matter, and I affirm.

ATTORNEY FEES

Claimant has not prevailed in a contested case hearing and is not entitled to an attorney fee. ORS 656.385(1).

ORDER

IT IS HEREBY ORDERED that:

The Administrative Order dated June 9, 2005 is affirmed.

¹ The dispute does not involve an action or decision of the MCO. OAR 436-009-0008(2)(b).