

In the ORS 656.385 Attorney Fee Dispute of  
**CHRISTOPHER CHAVIRA, Claimant**

Contested Case No: H04-066

**AMENDED PROPOSED DEFAULT ORDER**

JANUARY 19, 2005

TRAVELERS INDEMNITY COMPANY OF ILLINOIS, Petitioner

CHRISTOPHER CHAVIRA, Respondent

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

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**\*This Amended Order corrects the January 13, 2005 Proposed and Final Contested Case Hearing Order on Default. The case number in the caption section of that order is incorrect.**

**HISTORY OF THE CASE**

Insurer appealed the Administrative Order issued on March 26, 2004 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD) Department of Consumer and Business Services (director or the department). On November 17, 2004, the department referred the matter to the Office of Administrative Hearings (OAH). On January 3, 2005, Administrative Law Judge Catherine P. Coburn conducted a contested case hearing. Petitioner Travelers Indemnity Company of Illinois and Girard Management Group, LLC (insurer) were represented by attorney Thomas P. Busch. Respondent Christopher Chavira, *pro se*, failed to appear. No witnesses testified and the record closed on the date of hearing.

**ISSUES**

Whether claimant's attorney is entitled to a fee for services rendered before WCD.

**EVIDENTIARY RULINGS**

WCD Exhibits 1 through 53 as well as insurer's Supplementary Exhibits P1<sup>1</sup> through P52 were admitted into the record without objection.

**FINDINGS OF FACT**

(1) On June 3, 2003, claimant suffered a compensable injury while working as a forklift operator. (Ex. 1.) On July 28, 2003, insurer accepted "lower back contusion, cervical sprain/strain, thoracic sprain." (Ex. 8-1.)

(2) On October 13, 2003, insurer received bills from Jeffrey Baker, DC for dates of service October 2, 3, and 6. (Ex. P22.) On October 31, 2003, insurer paid these bills. (Ex. P23.)

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<sup>1</sup> I renumbered insurer's exhibits with a "P" for "Petitioner" to differentiate them from the WCD exhibits.

(3) On October 20, 2003, insurer received bills from Dr. Baker for dates of service October 8, 10, 13 and 15. (Ex. P27.) On October 31, 2003, insurer paid these bills. (Ex. P28.)

(4) On October 27, 2003, insurer received bills from Dr. Baker for dates of service October 17, and 20. (Ex. P31.) On November 21, 2003, insurer paid these bills. (Ex. P32.)

(5) On November 25, 2003, claimant's attorney requested administrative review of "non-payment of medical bills to Dr. Jeffrey Baker." (Ex. 44.)

### CONCLUSIONS OF LAW

Claimant is entitled to no attorney fee for services rendered before WCD.

### OPINION

The director exercises jurisdiction over an attorney fee issue arising under ORS 656.385. When a party was duly notified of the time of a hearing and fails to appear, not for reasons beyond his reasonable control, the ALJ may issue an adverse order upon a *prima facie* case on the record. OAR 137-003-0670(3)(a). Here, OAH sent the hearing notice to claimant's last known address and it was returned. Claimant is unrepresented and has made no contact with WCD or OAH to inquire the status of his case. Therefore, I find that a default order is warranted.

ORS 656.385 provides:

(1) In all cases involving a dispute over compensation benefits pursuant to ORS 656.245, 656.260, 656.327 or 656.340, where a claimant finally prevails after a proceeding has commenced before the Director of the Department of Consumer and Business Services, the director shall require the insurer or self-insured employer to pay a reasonable attorney fee to the claimant's attorney. In such cases, where an attorney is instrumental in obtaining a settlement of the dispute prior to a decision by the director, the director shall require the insurer or self-insured employer to pay a reasonable attorney fee to the claimant or claimant's attorney. The attorney fee must be based on all work the claimant's attorney has done relative to the proceeding at all levels before the department. The attorney fee assessed by the director, or on appeal from an order of the director, under this section must be proportionate to the benefit to the injured worker. The director shall adopt rules for establishing the amount of the attorney fee, giving primary consideration to the results achieved and to the time devoted to the case. An attorney fee awarded pursuant to this subsection may not exceed \$2,000 absent a showing of extraordinary circumstances.

Additionally, OAR 436-009-0030(3) provides in pertinent part:

Insurer shall date stamp medical bills and reports upon receipt and pay bills for medical services on accepted claims within 45 days of receipt of the bill \*\*\*.

MRU awarded an attorney fee of \$265 and insurer appeals. MRU noted that insurer had paid all outstanding medical bills prior to administrative review and that no ORS 656.245 dispute existed between the parties. MRU apparently assumed, without finding, that insurer had failed to pay certain bills timely and that claimant's attorney had been instrumental in obtaining payment. However, the record establishes that insurer paid all medical bills within 45 days as required by OAR 436-009-0030(3) and that claimant's attorney requested administrative review prematurely. Inasmuch as no dispute ever existed between the parties, and claimant's attorney was not instrumental in obtaining resolution, he is not entitled to a fee under ORS 656.385.

### **ORDER**

IT IS HEREBY ORDERED that:

The Administrative Order dated March 26, 2004 is reversed.