
In the ORS 656.245 Medical Services Dispute of

GERARD EGAN, Claimant

Contested Case No: H05-022

PROPOSED AND FINAL ORDER

June 2, 2005

GERARD EGAN, Petitioner

SAIF CORP., Respondent

Before Lawrence S. Smith, Administrative Law Judge, Administrative Hearings

HISTORY OF THE CASE

Gerard Egan (Claimant) timely appealed a February 16, 2005 Administrative Order issued by the Workers' Compensation Division (WCD) of Department of Consumer and Business Services. The Order concluded that SAIF Corporation (SAIF) was not required to reimburse Claimant for a visit to his doctor. His appeal was referred to the Office of Administrative Hearings (OAH) on February 24, 2005.

On May 26, 2005, Administrative Law Judge (ALJ) Lawrence S. Smith of OAH conducted a telephone hearing in this matter. Attorney Jeremiah Scannell represented Claimant, who also participated. Attorney David Runner represented SAIF. Carol Parks, Assistant Attorney General, represented WCD. No witnesses testified. The record closed that day.

ISSUE

Whether SAIF was required to reimburse Claimant for his visit with his doctor.

EVIDENTIARY RULING

WCD's Exhibits 1 through 30 were admitted without objection. SAIF objected to Claimant's Exhibits P1 and P2 as not relevant because they were offered to show how SAIF acted unreasonably in delaying reimbursement and the issue of unreasonable delay is an issue relevant only to grounds for assessing a penalty. Exhibits P1 and P2 were offered for that reason. They are not relevant and are not admitted.

FINDINGS OF FACT

(1) Claimant sustained a compensable injury on November 8, 1975. Since then, he has sought and received compensable medical care.

(2) Claimant lived in Guam for several years until late 2004. During his time in Guam, he received treatment from doctors who were not willing to bill SAIF, but required him to personally pay for the treatment. SAIF reimbursed him many times for his payments of medical treatment by Guam physicians. (Ex. 6.)

(3) On August 10, 2004, Claimant sought follow-up treatment for knee pain from Dr.

Teraje in Guam. Dr. Teraje noted the pain was at the site of Claimant's prosthetic right foot and prescribed Monetasone and Hydrocodone at a cost of \$66.29. (Exs. 1 and 2.) Claimant had to pay for the medical services at the time of service, or he would not be treated. He submitted a request to SAIF for reimbursement of his payment for the services and his prescriptions. SAIF reimbursed him for his prescriptions, but not for the medical services because it had no record from the doctor regarding the purpose of the services. (Ex. 6.) Claimant wrote to WCD, asking for an order that required SAIF to reimburse him for the medical services. WCD responded by requesting Dr. Teraje's chart notes. (Ex. 4.)

(4) SAIF and WCD received Dr. Teraje's chart notes by October 25, 2004. On December 17, 2004, SAIF wrote to Claimant, saying that it had received the chart notes and would be reimbursing Claimant for his services from Dr. Teraje. The reimbursement check was issued January 26, 2005 (Ex. 25) and received on January 27, 2005 (Ex. 26).

CONCLUSION OF LAW

SAIF was not legally required to reimburse Claimant for his visit with his doctor.

OPINION

The director has jurisdiction over medical service disputes. ORS 656.704(3) and ORS 656.245(6). The administrative decision is reviewed for substantial evidence or error of law. OAR 436-001-0225(1).¹ The burden of proving a fact or position is on the proponent. ORS 183.450(2). As petitioner, Claimant has the burden of proving that the administrative order lacks substantial evidence or is based on an error of law.

An insurer is obligated to provide medical services that are materially related to a compensable condition for so long as the nature of the injury or the process of recovery requires. ORS 656.245(1)(a). SAIF does not deny that the treatment provided by Dr. Teraje was for a compensable condition and in fact, reimbursed Claimant for his payment to Dr. Teraje, but WCD legally denied Claimant's request for reimbursement because his request for payment did not comply with OAR 436-009-0010, which states in relevant part:

(2) All medical providers shall submit bills to the insurer or managed care organization, * * * * *

(3)(a) All original medical provider billings shall be accompanied by legible chart notes documenting services which have been billed, and identifying the person performing the service and license number of person providing the service. * * *.

¹ OAR 436-001-0225(1) states:

Scope of Review/Limitations on the Record

(1) Review of medical service (ORS 656.245 and 656.247(3)(a)) and treatment (ORS 656.327 and 656.260) disputes is for substantial evidence or error of law. New medical evidence or issues may not be considered at the contested-case hearing.

Dr. Teraje's chart note and other information were provided and SAIF determined that his services were compensable, so the issues of compensability and the amount of the fee are not in issue. Claimant's request for reimbursement is denied because neither Dr. Teraje nor his office submitted a bill for his services to SAIF, so, pursuant to OAR 436-009-0010(2), SAIF is technically not required to reimburse Claimant for paying for the compensable treatment. Claimant has not established that the denial in the Administrative Order lacks substantial evidence or is a legal error. There is no legal basis to set aside the Administrative Order.

Claimant expressed concern that SAIF may offset the reimbursement paid to him from future payments. If it does, claimant should request waiver pursuant to OAR 436-009-0003(2).

The issue of unreasonable delay of payment and alleged penalty has not been alleged, and this Proposed and Final Order offers no opinion on it.

ATTORNEY FEE

Claimant did not prevail and is not entitled to an attorney fee under ORS 656.385(1).

ORDER

WCD's February 16, 2005 Administrative Order is affirmed.