

In the ORS 656.245 Medical Service Dispute of

**TERESA L. HICKS, Claimant**

Contested Case No: H04-155

**PROPOSED AND FINAL ORDER**

APRIL 22, 2005

JELD-WEN INC. c/o CRAWFORD & CO., Petitioner

TERESA L. HICKS, Respondent

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

---

**HISTORY OF THE CASE**

Jeld-Wen, Inc. (Employer) appeals an August 18, 2004 Administrative Order issued by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services. In the Order, MRU concluded that Employer was liable for medical services provided to Teresa Hicks (Claimant) by Richard Koller, MD. Employer's appeal was referred to the Office of Administrative Hearings (OAH) for hearing on October 22, 2004.

On March 23, 2005, Administrative Law Judge (ALJ) Lawrence S. Smith conducted a telephone hearing in this matter. Attorney Scott Terrall represented Employer. No one appeared on behalf of Claimant, Dr. Koller, or MRU/WCD. The record was closed that day.

**ISSUES**

(1) Whether WCD has jurisdiction over the reimbursability of diagnostic medical services.

(2) Whether substantial evidence supports MRU's Administrative Order that the diagnostic services provided by Dr. Koller were necessary to treat Claimant's compensable injury or MRU made an error of law in its Administrative Order.

**EVIDENTIARY RULINGS**

WCD's Exhibits 1 through 44 were received without objection.

At hearing, Employer submitted Exhibits 36A (Employer's letter, declining acceptance of bilateral carpal tunnel syndrome and/or bilateral lateral epicondylitis) and 40A (Order of Dismissal by the Workers' Compensation Board of Claimant's appeal of Employer's denial of compensability). No issues or medical evidence not considered by WCD may be considered. OAR 436-001-0225(1).<sup>1</sup> These exhibits were offered to establish the lack of jurisdiction of WCD and did not bring up new issues or new medical evidence, so they were admitted.

---

<sup>1</sup> OAR 436-001-0225(1) states:

Scope of Review/Limitations on the Record

## FINDINGS OF FACT

The Findings of Fact in the August 18, 2004 Administrative Order are accepted and incorporated in this Final and Proposed Order, with the following supplementation:

(1) On August 7, 2003, Employer accepted through its service company, Crawford and Company Insurance Adjusters, Inc. (Crawford) an upper back strain as a disabling condition of Claimant. (Ex. 16.) On March 23, 2004, Claimant requested Employer to amend its Notice of Acceptance to include Bilateral Carpal Tunnel Syndrome and Bilateral Lateral Epicondylitis. (Ex. 26.)

(2) On May 24, 2004, Employer declined to accept these conditions. (Ex. 36A.)

(3) On August 30, 2004, the Workers' Compensation Board issued an Order of Dismissal in regards to Claimant's appeal of Employer's denial of compensability of these conditions. (Ex. 40A.)

## CONCLUSIONS OF LAW

(1) WCD has jurisdiction over the reimbursability of diagnostic medical services prior to acceptance of a condition.

(2) There is substantial evidence to support the conclusion in MRU's Administrative Order that the diagnostic services provided by Dr. Koller were necessary to determine the cause or extent of Claimant's compensable injury.

## OPINION

### (1) Jurisdiction

Employer alleges that WCD lacks jurisdiction to consider whether services provided by Dr. Koller were necessary to determine the cause or extent of Claimant's compensable injury. Dr. Koller provided his services on June 13, 2003, before Employer accepted Claimant's upper back condition as compensable. On June 3, 2003, Dr. Kenny diagnosed carpal tunnel syndrome in both of Claimant's wrists and referred her to Dr. Koller for services to diagnose the cause of Claimant's carpal tunnel syndrome. In its Administrative Order, MRU addressed the issue whether Dr. Koller's services were diagnostic in nature for Claimant's compensable injury. MRU concluded that employer was liable for Dr. Koller's medical services.

There is no question that the disputed services provided by Dr. Koller are medical in nature. The question is whether they are reimbursable pursuant to ORS 656.245(1).<sup>2</sup>

---

(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.

<sup>2</sup> ORS 656.245(1) provides:

ORS 656.704(3) sets out the jurisdiction between WCD and the Workers' Compensation Board (WCB) in determining the payment of medical services. Employer argues that the services provided are matters of the claim under ORS 656.704(3)(b)(A) or (C), which are decided by WCB.

ORS 656.704(3)(b)(A) states, "Any dispute that requires a determination of the compensability of the medical condition for which medical services are proposed is a matter concerning a claim." This subsection does not apply to diagnostic services because such services do not require a determination of compensability. *Counts v. International Paper Co.*, 146 Or App 768, 771 (1997), following *Brooks v. D & R Timber*, 55 Or App 688 (1982). ["[I]f diagnostic services are necessary to determine the cause or extent of a compensable injury, the tests are compensable whether or not the condition that is discovered as a result of them is compensable."]

ORS 656.704(3)(b)(C) states, "Any dispute that requires a determination of whether a sufficient causal relationship exists between medical services and an accepted claim to establish compensability is a matter concerning a claim." At the time Dr. Koller provided the services, there was no accepted claim, so this section is also not applicable. Therefore, WCD has jurisdiction over this diagnostic medical service dispute pursuant to ORS 656.704(3)(a) and ORS 656.245(1).

## **(2) Substantial Evidence**

Employer has the burden of showing that the Administrative Order is not supported by substantial evidence or that it reflects an error of law. OAR 436-001-0225(1). MRU cited *Counts* and *Brooks* as support for its conclusion that Employer is liable for services even if they diagnose a condition that was later determined non-compensable. At the time the services were provided, Employer had not accepted any condition and there was still a question regarding whether Claimant's Carpal Tunnel Syndrome was caused by the injury. Employer's denial of this condition became final by operation of law, but this later determination of non-compensability does prevent liability for diagnostic services. The administrative order is therefore supported by substantial evidence and is affirmed.

---

(a) For every compensable injury, the insurer or the self-insured employer shall cause to be provided medical services for conditions caused in material part by the injury for such period as the nature of the injury or the process of the recovery requires, subject to the limitations in ORS 656.225, including such medical services as may be required after a determination of permanent disability. \* \* \*

(b) Compensable medical services shall include medical, surgical, hospital, nursing, ambulances and other related services, and drugs, medicine, crutches and prosthetic appliances, braces and supports and where necessary, physical restorative services. \* \* \*.  
The duty to provide such medical services continues for the life of the worker.

**ATTORNEY FEES**

Claimant prevailed in this matter, but did not participate in the hearing, so no attorney fees are ordered. ORS 656.385(1).

**ORDER**

IT IS HEREBY ORDERED:

MRU's August 18, 2004 Administrative Order is affirmed.