

In the ORS 656.385 Attorney Fee Dispute of

CHAD E. LEWIS, Claimant

Contested Case No: H05-095

PROPOSED AND FINAL ORDER

December 21, 2005

CHAD E. LEWIS., 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 23, 2005 by the Rehabilitation Review Unit (RRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (department or director). On July 19, 2005, the department referred the matter to the Office of Administrative Hearings (OAH). On November 8, 2005, Administrative Law Judge Catherine P. Coburn conducted a hearing in Beaverton, Oregon. Attorney James Dodge represented petitioner Chad E. Lewis (claimant). Attorney David L. Runner represented respondent SAIF Corporation (insurer). Claimant testified on his own behalf and the record closed on the date of hearing.

ISSUE

Whether claimant is entitled to an increased attorney fee.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 25 were admitted into the record without objection.

FINDINGS OF FACT

1. On April 21, 2003, claimant suffered a compensable left hand injury while working in a dairy production plant. (Exs. 1, 6 and 10.) Claimant's condition became medically stationary on June 4, 2004, and the claim was closed on June 22, 2004. (Ex. 9.)
2. On June 22, 2004, insurer issued a Notice of Ineligibility for Vocational Assistance for lack of permanent disability. (Ex. 11.)
3. By Order on Reconsideration dated October 6, 2004, the department awarded 5 percent permanent partial disability. (Ex. 14-4.)
4. On February 8 and February 18, 2005, claimant's attorney wrote to the vocational consultant, inquiring the status of vocational services. (Ex. 15.)
5. On May 4, 2005, insurer issued a Notice of Ineligibility indicating that claimant was able to return to regular work. (Ex. 19.) Claimant's attorney requested administrative review. (Ex. 20.) On June 10, 2005, claimant's attorney submitted a statement of services listing four

hours, beginning in August 2003. (Ex. 23.)

CONCLUSION OF LAW

Claimant is not entitled to an increased attorney fee.

OPINION

The director exercises jurisdiction over an attorney fee issue arising under ORS 656.385. I review *de novo*. OAR 436-001-0225(4). 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 (1998).

RRU determined that claimant cannot return to regular work and ordered SAIF to conduct a substantial handicap evaluation, valued at \$754. Additionally, RRU awarded an attorney fee of \$300. Claimant contends that he is entitled to a fee of \$800 (\$200 per hour X 4 hours). In contrast, insurer contends that RRU correctly determined the attorney fee for services before WCD.

ORS 656.385(1) provides in pertinent part:

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.

OAR 436-120-0008 provides in pertinent part:

(2) Attorney fees: In any dispute in which a represented worker prevails after a proceeding has commenced before the director, the director will award an attorney fee to be paid by the insurer or self-insured employer as provided in ORS 656.385 (2, ch. 756, OL 2003). The attorney fee will be proportionate to the benefit to the injured worker. Primary consideration will be given to the results achieved and the time devoted to the case.

I agree with RRU's determination concerning the attorney fee. The key factor is the value of the benefit to claimant. Here, claimant did not obtain vocational eligibility. Rather, RRU ordered insurer only to conduct a substantial handicap evaluation, valued at \$754. Under the circumstances, I find that the \$300 attorney fee was reasonable. Accordingly, 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 23, 2005 is affirmed.