
In the ORS 656.340 Vocational Assistance Dispute of

CHAD E. LEWIS, Claimant

Contested Case No: H05-126

PROPOSED AND FINAL ORDER

December 21, 2005

SAIF CORP., Petitioner

CHAD E. LEWIS, Respondent

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

HISTORY OF THE CASE

Insurer 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 RRU incorrectly determined that claimant is entitled to a substantial handicap evaluation.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 26 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.) Insurer accepted a left hand laceration and left carpal tunnel syndrome. (Exs. 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. Claimant last worked for the employer at injury on August 1, 2004. (Ex. 17-2.)
4. On September 15, 2004, medical arbiter William S. T. Mayhall, M.D. examined claimant for the purpose of rating permanent disability. (Ex. 13.) He noted that insurer had accepted both a left hand laceration and left carpal tunnel syndrome. (Ex. 13-6.) Dr. Mayhall identified invalid grip strength measurements. (Ex. 13-5.) He opined that the carpal tunnel

syndrome resulted in some significant abductor weakness and loss of ability to repetitively use the left hand. (Ex. 13-9.) He did not address claimant's ability to return to work. (Ex. 13.)

5. By Order on Reconsideration dated October 6, 2004, the department awarded 5 percent permanent partial disability. (Ex. 14-4.)

6. On March 17, 2005, Susan Bottomley, O.T.R. conducted a work capacity evaluation. She noted that insurer had accepted a left hand laceration and left carpal tunnel syndrome. (Ex. 17-1.) In testing left hand grip strength, she found that validity criteria were not met, indicating inconsistent effort. (Ex. 17-3.) She further noted that claimant's subjective complaints outweighed the objective findings. (Ex. 17-5.) Bottomley reviewed the milk production job analysis that claimant had approved and opined that he was able to return to regular work. (Exs. 17-5 and 17-20.)

7. On April 20, 2005, attending physician Rolf C. Sohlberg, M.D. concurred with the work capacity evaluation. (Ex. 18.)

8. On May 4, 2005, insurer notified claimant that he was ineligible for vocational assistance, and on May 13, 2005, claimant requested administrative review. (Exs. 19 and 20.)

CONCLUSION OF LAW

RRU incorrectly determined that claimant is entitled to a substantial handicap evaluation.

OPINION

Jurisdiction lies with the director. ORS 656.340(4). Pursuant to ORS 656.283(2)(c), I may modify the administrative order if it (A) violates a statute or rule, (B) exceeds the statutory authority of the agency, (C) was made upon unlawful procedure, or (D) was characterized by abuse of discretion or clearly unwarranted exercise of discretion. *See* OAR 436-001-0225(5). The burden of proof falls upon the proponent of a fact or position. ORS 183.450(2). In that regard, insurer bears the burden of proving by a preponderance of the evidence that RRU abused its discretion or exercised clearly unwarranted discretion in determining that claimant is eligible for vocational services. *See Harris v. SAIF*, 292 Or 683 (1982) (general rule regarding allocation of proof is that burden is on the proponent of the fact or position); *Cook v. Employment Div.*, 47 Or 437 (1982) (in the absence of legislation adopting a different standard, the standard of proof in an administrative hearing is by a preponderance of the evidence).

RRU determined that claimant cannot return to regular work and ordered SAIF to conduct a substantial handicap evaluation. RRU relied on the medical arbiter's opinion and discounted that of the attending physician. Insurer contends that claimant is ineligible for vocational assistance because the attending physician released him to regular work. In support of its position, insurer argues that RRU erred or abused its discretion by discounting the attending physician's opinion concerning claimant's ability to return to regular work. In

contrast, claimant contends that the medical arbiter's opinion is more reliable because he examined both accepted conditions *viz.*, left hand laceration as well as left carpal tunnel syndrome.

Pursuant to ORS 656.340, insurer is obligated to provide vocational assistance to injured workers who are eligible. When the medical evidence is divided, the director generally gives greater weight to the attending physician's opinion, absent persuasive reasons to do otherwise. *Weiland v. SAIF*, 64 Or App 810 (1983). The greatest weight is given to those medical opinions that are both well-reasoned and based upon complete information. *Harris v. Farmer's Co-op Creamery*, 53 Or App 618 (1981); *Hammons v. Perini Corp.*, 43 Or App 299 (1979). Here, medical arbiter Mayhall examined claimant once for the purpose of rating permanent impairment and opined that claimant suffered some loss of repetitive use of the left hand. However, Dr. Mayhall did not review the milk production job analysis and did not comment on claimant's ability to return to work. On the other hand, attending physician Sohlberg reviewed the work capacity evaluation which includes a statement of the accepted conditions and the milk production job analysis. Based on this information, as well as his expertise as attending physician, Dr. Sohlberg concurred with the release to regular work. Having reviewed the record, I conclude that RRU erred by according greater weight to the medical arbiter's opinion than the attending physician's opinion concerning claimant's ability to return to regular work. Accordingly, I reverse.

ATTORNEY FEES

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

ORDER

The Administrative Order dated June 23, 2005 is reversed.