

In the Managed Care Dispute of

Connie J. Long, Claimant

Contested Case No: 06-014H

FINAL ORDER

November 22, 2006

CONNIE J. LONG, Petitioner

SAIF CORPORATION, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

On May 18, 2006, Administrative Law Judge (ALJ) Holly J. Somers, of the Hearings Division of the Workers' Compensation Board, issued a Proposed and Final Order (Order) in this matter. Respondent SAIF Corporation (insurer) through its attorney, William J. Blitz submitted exceptions to the Order on June 5, 2006. Petitioner (claimant), through her attorney Floyd H. Shebley, filed a response to respondent's exceptions on June 20, 2006. Respondent insurer filed a reply on June 30, 2006. This matter comes before the director for a final order. The issue is whether the right knee CT scan constitutes a compensable medical service.

The parties agree that the ALJ erred in using the wrong packet of exhibits in issuing her Order. Therefore, the Order is withdrawn and the director issues this Final Order.

EXHIBITS

Exhibits 1 through 33 submitted by the Workers' Compensation Division and dated March 30, 2006 is hereby admitted into the record.

FINDINGS OF FACT

Claimant worked as a waitress for Dory Cove Restaurant. Ex. 2. On October 25, 2003, she slipped on a wet floor and fell on her tailbone. Ex. 2. She experienced immediate and severe pain in the right side of her low back. She was diagnosed with a sacral fracture without displacement or neurological compromise. Ex. 4.

Claimant treated with her family physician, Ralph Burke, M.D. Ex. 1.

Claimant filed a Form 801 for a "fractured tail bone." Ex. 2. On November 7, 2003, SAIF accepted a disabling injury for "sacral contusion and coccyx contusion." Ex. 5.

On December 3, 2004, SAIF denied "sacral fracture." Ex. 9. The denial was not appealed and is final. That same day, SAIF amended its acceptance to include "ligamentious disruption of the coccyx and post traumatic coccydynia." Ex. 10.

In June 2005, claimant treated with Dr. Burke's office for low back, hip and leg soreness, which included right knee pain. Ex. 1, pg. 3. Dr. Burke ordered a CT scan of the right knee to rule out a baker's cyst. *Id.* at 2. The CT scan performed June 17, 2005 showed no abnormalities. Ex. 11. On October 25, 2005, Dr. Burke stated that the right hip and right knee discomfort were directly related to claimant's compensable injury. Ex. 18.

On November 11, 2005, SAIF closed the claim through a Notice of Closure that awarded seven percent unscheduled permanent partial disability. Ex. 20.

On December 7, 2005, claimant requested a medical review of the dispute regarding payment for the CT scan. Ex. 24. On the form Specification of Disputed Medical Issues, SAIF indicated that the service was not a compensable medical service under ORS 656.245(1)(c). Ex. 26. On January 9, 2006, MRU issued an Administrative Order that found SAIF not liable for the cost of the CT scan because it did not constitute a compensable medical service. Ex. 32.

ANALYSIS AND CONCLUSIONS OF LAW

SAIF refused to pay for the cost of CT scan based on its determination that the CT scan was not a compensable medical service. The director has jurisdiction over:

any dispute that requires a determination of whether medical services are excessive, inappropriate, ineffectual or in violation of the rules regarding the performance of medical services, or a determination of whether medical services for an accepted condition qualify as compensable medical services among those listed in ORS 656.245(1)(c).

ORS 656.704(3)(b)(B). Therefore, the director has jurisdiction over this dispute. Pursuant to ORS 656.260(16), ORS 656.245(7) and (2), my review is for substantial evidence or errors of law.

Claimant requested a review of SAIF's refusal to pay the bill for the cost of the right knee CT scan. SAIF denied reimbursement because it determined that the CT scan was not a compensable medical service.

Claimant has the burden of proving that she sustained a compensable injury. ORS 656.266(1). Once claimant meets her burden of proof, ORS 656.245(1) requires the insurer to "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 recovery requires. The obligation continues for the life of the worker. A CT scan is a diagnostic procedure. For the diagnostic procedure to be compensable, claimant had the burden of proving that her compensable injury made the procedure necessary. *Counts v. International Paper Co.*, 146 Or App 768, 770 (1997). Generally, when a diagnostic procedure is related to a noncompensable condition, claimant is unable to meet her burden of proof. The court carved out an exception in *Brooks v. D & R Timber*, 55 Or App 688 (1982). Brooks suffered a compensable knee injury. *Id.* at 691. His doctor believed that the injury might have produced a tear in the meniscus of claimant's knee and ordered exploratory surgery. However, the surgery revealed that the knee condition was not a torn meniscus but a nonwork-related condition. *Id.* The court held that although the surgical procedure only revealed a non-work related condition, the surgery was performed because of the compensable injury. *Id.* at 692. Therefore, when diagnostic services are performed to determine the cause or extent of a compensable injury, the tests are compensable whether or not those procedures discover a noncompensable condition. *Counts v. International Paper Co.*, 146 Or

App at 771. The court in *Counts* held that a diagnostic procedure is not a compensable medical service if its purpose is to rule out a noncompensable condition. *Id.*

Here, MRU found that the purpose of the CT scan was to rule out a Baker's cyst. That determination is supported by substantial evidence. As a result, MRU determined that the purpose of the CT scan was not to determine the cause or extent of the compensable injury. Applying *Counts*, MRU determined that the CT scan was not a compensable medical service, and SAIF was not liable for its cost. The order issued by MRU is supported by substantial evidence and does not contain any errors of law. Therefore, the order is affirmed.

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 January 9, 2006 is affirmed.