

In the Managed Care Dispute of  
**Connie J. Long, Claimant**

Contested Case No: 06-014H

**PROPOSED & FINAL ORDER**

May 18, 2006

CONNIE J. LONG, Petitioner

SAIF CORPORATION, Respondent

Before Holly J. Somers, Administrative Law Judge, Workers' Compensation Board

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The hearing in this matter along with case number 06-00449,<sup>1</sup> convened in Portland, Oregon on Wednesday, April 19, 2006 before Administrative Law Judge Holly J. Somers. Claimant was present and represented by her attorney, Floyd Shebley. William Blitz represented the employer, Roads End Dory, Inc., and its insurer, SAIF Corporation. Exhibits 1-33 were admitted into the record. After recorded closing arguments, the record closed.

**ISSUES**

Claimant challenges the Director's January 9, 2006 Administrative Order finding SAIF not liable for a June 17, 2005 CT scan of claimant's right knee.

**FINDINGS OF FACT**

Claimant worked as a waitress for employer, the Dory Cove Restaurant. On October 25, 2003, she slipped on a wet floor and fell on her tailbone. She had immediate pain in her low back on the right side. Prior to this work injury, she had no prior problems with her low back, coccyx, right knee, or hip.

On November 7, 2003, SAIF accepted a disabling injury claim for "sacral contusion and coccyx contusion." Ex. 3.

Claimant treated with her long-time family physician, Ralph Burke, M.D. who referred her to surgeon, Timothy Treible, M.D. Dr. Treible performed a coccygectomy on March 4, 2004. Ex. 3A. Surgery provided claimant some pain relief in the coccyx area, but approximately a month after surgery she developed pain in her right hip and leg down to her knee.

On September 15, 2004, Dr. Treible deemed claimant medically stationary. Ex. 4.

An October 1, 2004 Notice of Closure awarded temporary disability only. Ex. 5. However, a November 22, 2004 Order on Reconsideration found insufficient information present to determine permanent disability and the Notice of Closure was rescinded. Ex. 7.

On November 22, 2004, Dr. Treible responded to questions from SAIF and indicated that claimant did not sustain a sacral fracture, but that post-traumatic coccydynia was a proper

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<sup>1</sup> An Opinion and Order is issued this date addressing the issues arising from the 06-00449 case number.

diagnosis for claimant's condition. Ex. 8. He also stated that although he deemed claimant medically stationary September 14, 2004, claimant returned to his office complaining of persistent discomfort in the coccygeal area, which he treated.

On December 3, 2004, SAIF denied "sacral fracture." Ex. 9. This denial was not appealed and is final.

Also on December 3, 2004, SAIF amended its acceptance to include "ligamentious disruption of the coccyx and post traumatic coccydynia." Ex. 10.

On December 8, 2004, Dr. Burke stated that claimant was not medically stationary because she continued to have "disabling pain in area of surg[ery]/injury." Ex. 10A.

At Dr. Treible's request, a pelvic MRI was taken on December 17, 2004 and showed no acute abnormality. Ex. 10B.

In May and June 2005, claimant treated at Dr. Burke's office for low back, hip, and leg soreness, including right knee pain. Ex. 10C, 10D, 11, 11A. At Dr. Burke's request, a right knee CT scan was taken on June 17, 2005, which showed no abnormalities. Ex. 12. The bill for this CT scan remains unpaid by SAIF.

On July 12, 2005, Dr. Burke stated that claimant had discomfort in her right hip and right knee with some decreased range of motion and that claimant was totally disabled. Ex. 13. On October 25, 2005, Dr. Burke stated that the right hip and right knee discomfort was "a direct result" of claimant's coccyx injury. Ex. 16.

On November 1, 2005, claimant's attorney requested SAIF amend their acceptance to include claimant's "right hip and right knee conditions." Ex. 17.

A November 11, 2005 Notice of closure awarded seven percent unscheduled permanent partial disability. Ex. 18.

On December 7, 2005, claimant's attorney requested the Medical Review Unit order SAIF pay for the June 17, 2005 CT scan of claimant's right knee. Ex. 21. SAIF responded to the request alleging that that scan was not a compensable medical service under ORS 656.245(1)(c). Ex. 22. The Director found that the CT scan was not provided to determine the cause and extent of the compensable injury, but to rule out a non-compensable condition, and therefore found SAIF not liable for the service. Ex. 23.

### **CONCLUSIONS OF LAW AND OPINION**

Claimant contends that the Administrative Order erred as a matter of law by misinterpreting controlling case law that states that diagnostic medical services rendered to determine the extent of compensability are compensable.

SAIF argues that claimant's contention that the CT scan was diagnostic was not raised

before the Director and therefore should not be considered.

Claimant's request that the Medical Review Unit require SAIF pay for the CT scan stated that the CT was ordered "to rule out a non-industrial cause for [claimant's] radicular pain." Ex. 24. SAIF's letter referred to the CT as "diagnostic." Ex. 27. The Director considered the compensability of the CT as "diagnostic services." Ex. 32-2. SAIF's contention that claimant did not timely raise compensability based on diagnostic services is without merit. The issue was raised by claimant, understood by SAIF to be raised, and in fact considered by the Director.

Generally, services related to the diagnosis of a claim are compensable if necessary to determine the cause or extent of the claimant's compensable injury. *Counts v. International Paper Co.*, 146 Or App 768 (1997). In *Counts*, the court cited *Brooks v. D & R Timber*, 55 Or App 688, 692 (1982), for the rule that "if 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." *Counts*, 146 Or App at 771. The purpose of the right knee CT was to determine the extent of claimant's compensable injury, that is, whether claimant's knee pain was due to the accepted injury or to a Baker's cyst. Consequently, the CT scan constituted "compensable diagnostic services." SAIF is liable for payment of the CT scan.

#### Attorney Fee

For prevailing in this matter, claimant's attorney is awarded an assessed attorney fee pursuant to ORS 656.385. Giving particular consideration to the time devoted to the matter and results achieved, I find a reasonable assessed attorney fee for claimant's attorney is \$500.

### **PROPOSED AND FINAL ORDER**

The June 17, 2005 right knee CT scan is a compensable medical service for which SAIF is liable.

Claimant's attorney is awarded an assessed attorney fee of \$500.

**IT IS SO ORDERED.**