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In the ORS 656.245 Medical Services Dispute of

**Martyn L. Miller, Claimant**

Contested Case No: H05-014

**FINAL ORDER**

March 13, 2006

MARTYN L. MILLER, Petitioner  
FREIGHTLINER, LLC, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

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Petitioner claimant Martyn Miller, representing himself, timely filed exceptions<sup>1</sup> to Office of Administrative Hearings Administrative Law Judge (ALJ) Daina Upite's September 26, 2005 Proposed and Final Order. Respondent employer Freightliner, through its attorney Deborah L. Sather, responded. This matter comes before the director of the Department of Consumer and Business Services for a final order. I adopt and affirm ALJ Upite's order with the following supplementation.

Mr. Miller raises several issues in his exceptions, which I address below. First, I briefly review the procedural history of this case. Mr. Miller sustained a work-related injury on February 1, 1996. In August 1997 Freightliner accepted: (1) left knee torn medial meniscus; (2) left knee strain; (3) bullous skin reaction to neoprene brace with secondary infection and diffuse cellulitis, Methicillin resistant staph infection of the left leg, status post severe septic cellulitis, contact dermatitis of the left leg as a consequential condition; and (4) treatment for renal insufficiency secondary to vancomycin treatment.

In late 1999 Mr. Miller, through his former attorney Peter O. Hansen, requested administrative review by the Medical Review Unit (MRU) of a medical services dispute. At issue were hospitalizations in July and August, 1999, and prescriptions for colchicine, dexamethasone, and prednisone. Freightliner's position was that the services were not causally related to Mr. Miller's accepted conditions. On December 30, 1999, MRU deferred its review and transferred the dispute regarding causation to the Workers' Compensation Board, as required by ORS 656.704(3)(b).<sup>2</sup> Workers' Compensation Board Hearings Division ALJ Hoguet held a hearing and issued an Opinion and Order on May 6, 2002. ALJ Hoguet upheld Freightliner's

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<sup>1</sup> Mr. Miller's October 31, 2005 submission is titled "PETITIONER'S APPEAL, WITH EXCEPTIONS, ARGUMENT TO PROPOSED AND FINAL ORDER," is formatted like an appellate brief, and contains the heading "In the Court of Appeals of the State of Oregon." The Court of Appeals has confirmed that Mr. Miller does not have an appeal pending with the court, and I take official notice of that fact.

<sup>2</sup> ORS 656.704(3) provides, in part:

"(3)(a) For the purpose of determining the respective authority of the director and the board to conduct hearings, investigations and other proceedings under this chapter, and for determining the procedure for the conduct and review thereof, matters concerning a claim under this chapter are those matters in which a worker's right to receive compensation, or the amount thereof, are directly in issue. \* \* \*

"(b) The respective authority of the board and the director to resolve medical service disputes, other than disputes arising under ORS 656.260, shall be determined according to the following principles:

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"(C) 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."

denial of additional conditions, finding no medical opinion attributing them to Mr. Miller's compensable injury. ALJ Hoguet additionally found insufficient medical opinion establishing the compensability of the 1999 hospitalizations and prescriptions. Mr. Miller requested board review of ALJ Hoguet's order. On November 7, 2002, the board issued an Order on Review affirming ALJ Hoguet's order. Mr. Miller appealed the board's order to the Court of Appeals, which affirmed it without written opinion. Mr. Miller responded to the court's order; the court declined to reconsider its decision.

Following the Court of Appeals' denial of reconsideration MRU renewed its review, and on January 5, 2005 dismissed Mr. Miller's request for administrative review based on the prior, now final orders. Mr. Miller requested a contested case hearing. ALJ Upite held a hearing and issued a Proposed and Final Order affirming MRU's dismissal. ALJ Upite reasoned that ALJ Hoguet's order finding the services not compensable is final and binding.

Mr. Miller raises the following issues in his exceptions.

### **Extension of time in which to file exceptions**

Mr. Miller states that he only had ten days in which to appeal ALJ Upite's Proposed and Final Order, but Freightliner had 21 days to respond.

ALJ Upite's order is dated September 26, 2005. Under OAR 436-001-0275<sup>3</sup> and as stated in the Notice of Review and Appeal Rights contained in the order, Mr. Miller had 30 days in which to file exceptions to the order. His deadline to file exceptions was therefore October 26, 2005. On October 18, 2005, 22 days after the order issued, Mr. Miller requested a 45-day extension of the time in which to respond to the order. The Workers' Compensation Division treated his request as timely exceptions, and allowed him an additional 10 days after the deadline, or until November 5, 2005, to submit written argument in support of his exceptions. Because November 5, 2005 fell on a Saturday, Mr. Miller had until November 7, 2005 to submit his argument, for a total of 42 days. Freightliner had 20 days from the date that Mr. Miller submitted his argument in which to respond, as provided in OAR 436-001-0275.

### **Evidentiary issues**

Mr. Miller responds to ALJ Upite's evidentiary rulings. Before addressing his arguments, a review of jurisdictional limitations may be helpful. Jurisdiction over workers' compensation matters in Oregon is split between the Workers' Compensation Board (and its Hearings Division) and the director of the Department of Consumer and Business Services. ORS 656.704. A matter regarding whether a sufficient causal relationship exists between medical services and an accepted claim is within the board's, not my, jurisdiction. ORS 656.704(3)(b)(C). The dispute regarding whether a sufficient causal relationship exists between Mr. Miller's 1999

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<sup>3</sup> Effective 4/1/04 ("(1) [W]ritten exceptions must be filed within 30 days of the date of service of the proposed and final order. (2) Written responses to exceptions must be filed within 20 days of service of the exceptions \* \* \*. (3) If no exceptions are filed, the proposed and final order becomes final 30 days after the date of service of the order."). The rule was amended and renumbered to OAR 436-001-0246 effective January 2, 2006. The amendments are not applicable to this case.

hospitalizations and prescriptions and his accepted claim was, therefore, correctly heard by board ALJ Hoguet. That decision was appealed to the board and the Court of Appeals. I have no authority to review ALJ Hoguet's decision or the orders affirming it.

My authority is limited to a review of MRU's January 5, 2005 Order of Dismissal and ALJ Upite's order, within the confines of the law. Under ORS 656.245 and 656.327,<sup>4</sup> my review is further limited, as was ALJ Upite's. The only issue I can consider is whether MRU's January 5, 2005 Order of Dismissal reflects an error of law or is not supported by substantial evidence in the record. MRU's January 5, 2005 Order of Dismissal was limited to the issue of whether the 1999 hospitalizations and prescriptions were compensable. Any other issues must be raised in a separate proceeding.

Mr. Miller argues that evidence after 1999 was not allowed by ALJ Upite, but Freightliner was allowed to submit evidence from the independent medical exam (IME) performed in July 2000. I do not find the 2000 IME reports in the record before me (although Mr. Miller appears to have submitted excerpts from the reports in his offered exhibits). The IME reports may have been in the evidentiary record that was before ALJ Hoguet, but that record is separate from the record in this proceeding. The evidentiary record in this proceeding is the record on which MRU based its decision, as well as any evidence offered and accepted at the hearing before ALJ Upite.

Mr. Miller also argues that evidence in the record that does not pertain to him was used against him. However, he does not point to any specific finding based on the excluded evidence, and I find none in MRU's January 5, 2005 order or in ALJ Upite's order.

Mr. Miller further argues that his witnesses were not allowed to testify at the hearing before ALJ Upite. The ALJ, however, was within her discretion to limit the evidence at hearing to those issues that were within her scope of review.

### **Findings of fact**

Mr. Miller takes issue with two of ALJ Upite's findings of fact. Finding of fact (4) states,

Claimant was hospitalized on July 4, 1999 with complaints of fever, chills and weakness. He was diagnosed with urosepsis and history of renal failure, and admitted to the hospital in serious condition. Claimant was admitted to the hospital again on August 9, 1999 with a complaint of difficulty breathing. He was diagnosed with pneumonia, urinary tract infection, history of chronic renal insufficiency, gout, chronic methicillin resistant staph infection of

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<sup>4</sup> ORS 656.245(7) provides,

“\* \* \* if a claim for medical services is disapproved, the injured worker, insurer or self-insured employer may request administrative review by the director pursuant to ORS 656.260 or 656.327.”

ORS 656.327(2) in turn provides,

“\* \* \* At the contested case hearing, the administrative order may be modified only if it is not supported by substantial evidence in the record or if it reflects an error of law. No new medical evidence or issues shall be admitted. \* \* \*”

the left leg, and hypertension. (Ex. 159.)

First, Mr. Miller argues that the diagnosis of urosepsis was erroneous, and a diagnosis of sepsis is accurate. Based on exhibit 159, however, ALJ Upite's finding is accurate. Exhibit 159, on page 3, shows that on July 4, 1999 the emergency department doctor, Chad Colvin, D.O., diagnosed Mr. Miller with urosepsis and history of renal failure and admitted Mr. Miller to the hospital in serious condition after consulting with Dr. Miciak.

Next, Mr. Miller argues that the diagnosis of pneumonia and urinary tract infection was erroneous; he was diagnosed with pulmonary embolism. Again, ALJ Upite's finding is accurate based on the exhibit. Exhibit 159, on page 6, shows that on August 9, 1999 Dr. Colvin initially diagnosed Mr. Miller with, among other things, pneumonia and urinary tract infection, and admitted him to the hospital. Subsequent investigation may have changed the initial diagnoses, and Mr. Miller may disagree with them. However, the findings as stated are accurate.

Mr. Miller also states that he never had a second surgery on the left knee. While I have no reason to doubt his assertion, I find no such finding in MRU's January 5, 2005 order or in ALJ Upite's order.

### **Causal relationship**

Mr. Miller argues that the evidence he has offered establishes a causal relationship between his compensable injury and the disputed services. Moreover, he states, he is entitled to lifetime medical benefits under ORS 656.245(1)(a).

In order for medical services to be found compensable, a claimant must show that the legal standard has been met. It has already been determined, in the proceeding before the board, that Mr. Miller has not met that standard. That determination is now final, and I am unable to revisit it. Mr. Miller has done a great deal of research about his medical conditions and has spent a great deal of time putting together information to submit into evidence. However, I am bound by the limits on my review authority.

### **Recent hospitalizations**

Mr. Miller also raises issues related to recent hospitalizations in 2005. However, as stated above my authority at this time is limited to reviewing ALJ Upite's order and MRU's January 5, 2005 order regarding the 1999 hospitalizations and prescriptions. Issues regarding subsequent medical services must be raised in a separate proceeding.

### **Conclusion**

It is clear that Mr. Miller has some very real and very serious health issues. His frustrations with trying to navigate his way through the complexities of the workers' compensation system without the assistance of legal counsel are also clear. Unfortunately, I am unable to rule in his favor. ALJ Hoguet's conclusion that claimant did not legally establish the medical services at issue – hospitalizations in July and August, 1999, and prescriptions for

colchicine, dexamethasone, and prednisone – to be compensable is a final determination, and I have no authority to determine otherwise.<sup>5</sup>

**IT IS HEREBY ORDERED** the September 26, 2005 Proposed and Final Order is affirmed.

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<sup>5</sup> Mr. Miller may wish to consult with the Ombudsman for Injured Workers regarding issues related to the workers' compensation system. The toll free number is 1-800-927-1271. Mr. Miller may also wish to consult with a civil attorney regarding some of the other issues he has raised.