

In the ORS 656.260 Managed Care Dispute of

RICHARD E. ROBUCK, Claimant

Contested Case No: H05-069

FINAL ORDER

January 27, 2006

RICHARD E. ROBUCK, Petitioner

SAIF CORP., Respondent

Before John Shilts, Administrator, Workers' Compensation Division

On July 18, 2005, Administrative Law Judge (ALJ) Lawrence S. Smith, of the Office of Administrative Hearings, issued a Proposed and Final Order (Order) in this matter. Petitioner (claimant) through his attorney, Philip F. Schuster II, submitted exceptions to the Order on July 22, 2005. On August 11, 2005, Respondent (insurer) through its attorney, Jerome B. Larkin, issued its response to claimant's exceptions. Claimant filed his reply on August 19, 2005.

This matter comes before the director for a final order. The issues are whether the ALJ properly determined that there was substantial evidence supporting MRU's order and whether the ALJ abused his discretion in declining to remand this case to the managed care organization (MCO). I limit my review to the issues raised in the exceptions. Having reviewed the proposed order and parties' arguments, I adopt and affirm with the following supplementation.

The underlying dispute between the parties is whether the insurer is liable for the cost of 12 physical therapy (PT) treatments. The Medical Review Unit (MRU), by Administrative Order on Reconsideration dated May 3, 2005, found that the physical therapy was prescribed for the sacroiliac joint symptomology instead of the accepted underlying lumbosacral strain; therefore, the insurer was not liable for the cost of the PT treatment. (Ex. 51).

Claimant requested a hearing. The ALJ affirmed MRU's order concluding that there was substantial evidence that the prescribed PT treatment was not related to the accepted conditions. In his exceptions to the Proposed Order, claimant argues that the ALJ erred in finding that substantial evidence supports MRU's determination that the insurer was not required to reimburse claimant for the cost of the PT treatment because it related to the sacroiliac joint which was not part of the accepted condition. In the alternative, claimant argues that the ALJ abused his discretion because he did not remand the case to the MCO for further development of the record.

Claimant argues that no reasonable person could conclude that the PT treatment was prescribed for the sacroiliac joint instead of the accepted lumbosacral strain. He relies upon *Van Raden Industries v. Smith*, 200 Or App 356 (2005) as the basis for his argument. It was indisputable that the claimant in *Van Raden* had carpal tunnel syndrome. Dr. Nye, the claimant's attending physician, expressly stated that he did not consider the claimant's left-hand dysfunction to be a preexisting condition and opined that the claimant's "one-handed work over a period of years" was the major contributing cause of the carpal tunnel syndrome. The ALJ did not find Dr. Nye's opinion persuasive because he failed to consider and weigh whether the left-hand dysfunction was a preexisting condition. The Workers' Compensation Board reversed the ALJ

because it assumed that Dr. Nye had considered the effect of the claimant's left-hand dysfunction in concluding that the claimant's work activity was the major contributing cause of the carpal tunnel syndrome. The Court of Appeals reversed the Board in concluding that no reasonable person could interpret Nye's opinion the way in which the board interpreted it. The court, therefore, remanded the case back to the Board for reconsideration. The medical records in this case, however, are quite different from those in *Van Raden*.

In a January 9, 2004 letter to claimant's attorney, Dr. Kafrouni appears to be explaining why he believes that the major cause for treatment is not claimant's degenerative condition. (Ex. 1). However, the letter is internally inconsistent. First, he states "[a]t this point, the lumbar strain and sacroiliac joint strain and inflammation, as seen on bone scan, appeared within medical probability, the major contributing cause for current treatment." (Ex. 1, pg. 2). Then he states "I believe it is medically probable that the major ongoing cause for treatment is the injured worker's right sacroiliac joint pain and dysfunction/inflammation." *Id.* Later in that same letter he states "I do believe that there is medical probability of Mr. Robuck's lumbar strain and right sacroiliac joint and dysfunction as being the major contributing cause of ongoing treatment." *Id.* at 3. Thus, this letter from Dr. Kafrouni is internally inconsistent.

In another letter to claimant's attorney dated January 24, 2004, Dr. Kafrouni again appears to be explaining why he does not believe that the degenerative changes correlate with the current clinical findings. (Ex. 2) In that letter, he states that it is "medically probable that the current objective clinical findings support a symptomatic right sacroiliac joint."

The office visit chart note dated February 9, 2004, is the document where Dr. Kafrouni indicates he will order physical therapy. (Ex. 4) It is interesting to note that it indicates that the accepted condition is lumbosacral strain, and under assessment, it states "Work-Related Diagnosis: 1. Lumbosacral strain." Nevertheless, the subjective portion of the note indicate "Right SI joint region. Increased with transitions, sitting for extended periods of time and extended walking. Sharp with movements and dull constantly." It does show as a new symptom "central low back pain," however, states that pain is minimal. Claimant is correct, Dr. Kafrouni does state the treatment is for "lumbosacral strain." But in the Discussion on page 2, Dr. Kafrouni states: "[o]bjective evidence of right sacroiliac joint pain and inflammation are present."

The review at the contested case level is limited to a review for substantial evidence and errors of law. ORS 656.260(16). Dr. Kafrouni's reports could be interpreted to support either conclusion that the treatment related to the lumbosacral strain or the right sacroiliac joint condition. Therefore, there is substantial evidence that the PT was prescribed for the sacroiliac joint condition and not the accepted lumbosacral strain.

Claimant also requested that this case be remanded to the MCO for further development of the record. However, the record is sufficiently developed for review. Therefore, there is no need for remand.

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 May 3, 2005 is affirmed.