

In the ORS 656.260 Managed Care Dispute of

Douglas H. Brown, Claimant

Contested Case No: 07-044H

FINAL ORDER

September 12, 2007

DOUGLAS H. BROWN, Petitioner

SAIF CORPORATION, Respondent

Before John Shilts, Workers' Compensation Division Administrator

Petitioner, Douglas H. Brown, through attorney Glen J. Lasken, timely filed exceptions to Workers' Compensation Board Administrative Law Judge (ALJ) Jill M. Riechers' July 19, 2007 Proposed and Final Order. Attorney Thomas A. Sieg responded on behalf of respondent, SAIF Corporation. I review under ORS 656.704(2)(a).

The issue is whether the decision of the ALJ affirming the Medical Review Unit's denial of the proposed surgery was supported by substantial evidence.

Petitioner argues that the decision was not supported by substantial evidence and that the only medical evidence supporting the ALJ's ruling is Exhibit 103 from Dr. Ballard "which does not rise to the level of substantial evidence."

The ALJ viewed the record as a whole and concluded that there was substantial evidence to support the decision of the Medical Review Unit. Specifically, Judge Riechers stated:

"In looking at the record, including the opinions of Dr. Ha, Dr. Ballard, the OHS medical review committee and the finding set forth in the August 19, 2005 MRI report, I find there is substantial evidence to support the decision of the Director in this case."

This is a managed care dispute arising under ORS 656.260(6), therefore jurisdiction lies with the director. The ALJ reviews for substantial evidence and error of law. ORS 656.260(16). The burden of proving a fact or position rests with the proponent. ORS 183.450(2); *Salem Decorating v. National Council on Comp. Ins.*, 116 Or App 170 (1992), *rev den* 315 Or 643 (1993). As the proponent of the position, the claimant has the burden of proving by a preponderance of the evidence that the administrative order is incorrect. *Harris v. SAIF*, 292 Or 683(1982). In the absence of legislation adopting a different standard of proof, the standard in an administrative hearing is preponderance of the evidence. *Cook v. Employment Div.*, 47 Or App 437 (1980). Proof by preponderance of evidence means that the fact finder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989).

Under "substantial evidence" review, the reviewing tribunal "looks at the whole record with respect to the issue being decided, rather than at one piece of evidence in isolation. If an agency's finding is reasonable, keeping in mind the evidence against the finding as well as the evidence supporting it, there is substantial evidence." *Liberty Northwest Ins. Corp v. Kraft*, 205 Or App 59, 62 (2006) citing *Armstrong v. Asten-Hill Co.*, 90 Or App 200, 206 (1988).

In this case the fact finder, the Medical Review Unit, found the opinion of Dr. Ballard persuasive and well reasoned. Judge Riechers on review, found substantial evidence to support the decision. I adopt the decision.

IT IS HEREBY ORDERED that the July 19, 2007 Proposed and Final Order is adopted.