

In the ORS 656.340 Vocational Assistance Dispute of

**Tom H. Dorcy, Claimant**

Contested Case No: 06-141H

**FINAL ORDER**

March 20, 2007

AMERICAN HOME ASSURANCE CO., Petitioner

TOM H. DORCY, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

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Respondent claimant, through his attorney Scott M. Supperstein, timely filed exceptions to Workers' Compensation Board Administrative Law Judge Elizabeth Fulsher's December 29, 2006 Proposed and Final Order. Petitioner insurer, through its attorney Brad G. Garber, timely responded. This matter comes before the director for a final order. The issue is whether claimant remains eligible for vocational assistance. I adopt and affirm the proposed order with the following supplementation.

I adopt the ALJ's findings of fact.

The underlying issue is whether insurer appropriately ended claimant's eligibility for vocational assistance based on an IME finding that claimant did not have permanent impairment due to his accepted condition. The Rehabilitation Review Unit (RRU), by Director's Review and Order dated August 29, 2006 and Amended Director's Review and Order dated August 31, 2006, set aside insurer's ineligibility determination. RRU reasoned that since his claim remained open, it was yet to be determined whether claimant was determined not to have permanent disability. Insurer requested a hearing. ALJ Fulsher reversed because after RRU issued its order claimant's claim was closed with no permanent disability. Under OAR 436-120-0350(2)<sup>1</sup>, claimant was no longer eligible for vocational assistance in that circumstance.

Claimant argues that ALJ Fulsher erred in considering the Notice of Closure that was issued after RRU's order because "the vocational dispute involved claimant's entitlement to vocational assistance prior to issuance of the [] Notice of Closure." Insurer responds that claimant is seeking procedural vocational benefits to which he is not substantively entitled.

I am not persuaded by claimant's exceptions to modify the proposed order. When a worker is determined to be ineligible for vocational assistance, the insurer's obligation to provide assistance ceases. There is no provision for an insurer to retroactively provide vocational benefits for prior periods of eligibility. If claimant is later awarded permanent disability, insurer will be required to redetermine eligibility under OAR 436-120-0360(4).<sup>2</sup>

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<sup>1</sup> OAR 436-120-0350(2) provides,

"A worker is ineligible or the worker's eligibility ends when any of the following conditions apply:

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"(2) The worker is determined not to have permanent disability after a finding of eligibility."

<sup>2</sup> OAR 436-120-0360(4) provides,

It was not err for the ALJ to consider the Notice of Closure, and the proposed order is therefore affirmed.<sup>3</sup>

**IT IS HEREBY ORDERED** the December 29, 2006 Proposed and Final Order is adopted and affirmed as supplemented above.

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“If a worker was previously found ineligible or the worker's eligibility ended for any of the reasons specified in sections (1) through (8), or any of the conditions described in sections (9) through (11) exists, the insurer shall redetermine eligibility upon notification of a change of circumstances. The insurer shall complete the eligibility evaluation within 35 days of the following:

“\* \* \* \* \*

“(4) The worker was not awarded permanent disability and the worker is later awarded permanent disability.”

<sup>3</sup> In the proposed and final order the ALJ also addressed claimant's motion to dismiss employer's request for hearing. Claimant did not take exception to that portion of the ALJ's order so I do not address it here.