

In the Compensation of  
**Sharman Graham, Claimant**  
Contested Case No: 07-035H  
**PROPOSED & FINAL ORDER**

August 24, 2007

SHARMAN GRAHAM, Petitioner  
LIBERTY NW INSURANCE CORPORATION, Respondent  
Before John Mark Mills, Administrative Law Judge

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Hearing in this matter was set before Administrative Law Judge Mills in Portland, Oregon on June 5, 2007. Prior to the time of hearing the parties advised that the matter could be submitted on the documentary record. Claimant was represented by her attorney, Jim Guinn. The employer, Clackamas Community College, and their insurer, Liberty Northwest, were represented by their attorney, Barbara Woodford. No proceedings were recorded. Exhibits 1 through 19 were submitted and received into evidence. The record was closed following the receipt of initial closing arguments and after waiver of claimant's right to a rebuttal argument on August 9, 2007.

### ISSUES

Claimant contests the Director's Vocational Order, dated January 2, 2007, which denied her eligibility for vocational benefits.

### FINDINGS OF FACT

Claimant filed a claim for a back strain on November 5, 2005, which was accepted for a strain (Exs. 1, 6-4). Claimant's treating physician at the time of closure was Dr. Yoshinaga. He released her to work with no restrictions on June 1, 2006, noting that claimant had degenerative disease in her low back at L4-5, which might be causing her back pain (Ex. 4). Based on Dr. Yoshinaga's evaluation, claimant's claim was closed, with no award for permanent disability, on June 26, 2006 (Ex. 6).

Claimant requested reconsideration of the Notice of Closure and saw a medical arbiter, Dr. Larsen, on August 15, 2006 (Ex. 7). He indicated that claimant did have some disability and restrictions on her ability to return to work, and claimant received an award of permanent impairment in an Order on Reconsideration issued on September 15, 2006 (Ex. 10).

In the meantime, claimant began treating with a different physician, Dr. Pierson, who, like Dr. Yoshinaga, indicated that claimant had no impairment or restrictions due to her compensable injury, but did have limitations as a result of her degenerative disc disease (Ex. 9).

The insurer declared claimant ineligible for vocational assistance because of Dr. Pierson's release to regular work on October 17, 2006. (Ex. 13). Claimant requested review and a Director's Order was issued on January 2, 2007, which approved the denial of vocational assistance (Ex. 16). Claimant requested a hearing before the Workers' Compensation Board.

While that matter was pending an Opinion and Order was issued in connection with the denial of claimant's underlying degenerative L4-5 disc condition and that claim was found non-compensable (Ex. 18). In addition, the insurer appealed the Order on Reconsideration and an Order on Review was issued by the Board on July 2, 2007, which reversed the award of permanent impairment, finding that the evaluation of the arbiter, Dr. Larsen, was unpersuasive and relying instead on Dr. Yoshinaga's evaluation (Ex. 19).

### **CONCLUSIONS AND OPINION**

This is a review of a Director's Order concerning vocational assistance under ORS 656.283(1)(c). I am limited to modifying or setting aside the Director's Order only if it violates a statute or rule, exceeds the authority of the Director, was made by an unlawful procedure, or involved an abuse of discretion.

At this point the record is clear and the legal status of the case is such that there is no basis to modify the Director's decision. There is persuasive medical evidence from claimant's treating physician, Dr. Yoshinaga, at the time of closure, and from claimant's subsequent physician, Dr. Pierson, that claimant does not have any permanent disability or restrictions on her ability to return to her regular work at the time of injury due to her compensable injury. There is contrary medical evidence from the arbiter, but it is the law of the case at this point, due to the Board's decision, that the arbiter's evaluation is unpersuasive. In any event, under an abuse of discretion standard, I do not have the authority to decide that the arbiter's evaluation is more persuasive than that of claimant's two treating physicians, and even if I did have that authority I would not reach that conclusion.

In addition, the medical evidence indicates that what restrictions claimant does have on her ability to return to work are due to preexisting degenerative findings in her back, specifically at L4-5, and again it is the law of the case that that condition is not compensable.

Under ORS 656.340, claimant is eligible for vocational assistance only if she has a substantial handicap to employment and is unable to return to her prior employment or to other available and suitable employment with the employer at injury. Since the medical evidence establishes that claimant has no such restrictions, I approve the Director's Order.

### **ORDER**

IT IS HEREBY ORDERED that the Director's vocational Order, dated January 2, 2007, approving the denial of claimant's vocational eligibility, is approved.