
In the ORS 656.340 Vocational Assistance Dispute of
Steven E. Helstowski, Claimant

Contested Case No: 07-008H

FINAL ORDER

October 15, 2007

STEVEN E. HELSTOWSKI, Petitioner
SAIF CORPORATION, Respondent

Before John Shilts, Workers' Compensation Division Administrator

Petitioner, Steven E. Helstowski, through attorney Michael A. Gilbertson, timely filed exceptions to Workers' Compensation Board Administrative Law Judge (ALJ) Elizabeth Fulsher's July 29, 2007 Proposed and Final Order. Attorney Carrol J. Smith responded on behalf of SAIF Corporation. I review under ORS 656.704(2)(a), and adopt and affirm.

At issue is whether the petitioner has a substantial handicap to employment and is therefore eligible for vocational assistance under ORS 656.340(6)(a). Judge Fulsher's Proposed and Final Order affirms the Rehabilitation Review Unit's order that found the petitioner was not eligible for vocational assistance.

This is the second Proposed and Final Order on this issue. In the first order, ALJ Emerson G. Fisher remanded the case for further administrative proceedings on claimant's limitations for suitable employment.

Petitioner contends that the current decision failed to account for the prior order and for his inability to repetitively use his knee, as found both by his attending physician and the medical arbiter.

Respondent argues that the question is whether the ALJ and the director properly determined that the proposed jobs are suitable given the claimant's restrictions. Respondent maintains the proposed jobs are suitable. In addition, respondent contends that the prior order has no effect on this decision.

In the prior order, issued on November 11, 2006, Judge Fisher stated:

“Here, the law of the case (as determined by the December 7, 2005 Order on Reconsideration) establishes that claimant is significantly limited in the ability to repetitively use his right leg. However, because there is no discussion of that limitation in either RRU's 'suitable employment analysis' or its July 17, 2005 order, I am unable to determine, from the record presented, whether RRU considered that limitation in its determination that cashier/checker and sales clerk were suitable employment for claimant. Because of my limited review, I am unable to consider on a *de novo* basis, whether the cashier/checker and sales clerk jobs are, in fact, suitable for a worker who is significantly limited in his ability to

repetitively use his right leg. Therefore, remand pursuant to OAR 436-001-0170(5) is appropriate.”

Since that decision, the Rehabilitation Review Unit (RRU) on November 27, 2006, issued an order that stated the attending physician agreed with the physical capacities evaluation (PCE) of claimant’s physical abilities and concluded that the claimant was able to perform medium work. The RRU stated:

“Although the medical arbiter found that Mr. Helstowski was limited in his ability to repetitively use his right leg, he did not identify any work restrictions. ALJ Fisher found that RRU was bound by the law of the case, as established by the Order on Reconsideration, which stated that Mr. Helstowski was significantly limited in his ability to repetitively use his right leg. I conclude that this is not the case, as established in the *Hardman*, *Ott* and *Vandervort* cases. Furthermore, I give greater weight to Dr. Bollom, who has had the opportunity to treat Mr. Helstowski over time, and on multiple occasions. Moreover, Dr Bollom concurred with the PCE. Therefore, I conclude Mr. Helstowski’s only restrictions are those outlined by Dr. Bollom, Ms. Walz and Mr. Tim in the March 27, 2006, PCE report.”

Judge Fulsher’s Proposed and Final Order affirmed the Rehabilitation Review Unit’s order that relied on the opinion of the attending physician that the PCE concluded claimant was capable of medium work and therefore not eligible for vocational assistance. I agree.

IT IS HEREBY ORDERED that the July 29, 2007 Proposed and Final Order is adopted and affirmed.