

In the ORS 656.245 Medical Fee Dispute of

**Kevin M. Lyon, Claimant**

Contested Case No: 06-137H

**PROPOSED & FINAL ORDER**

March 23, 2007

KEVIN M. LYON, Petitioner

SAIF CORPORATION, Respondent

Before Douglas C. Crummé, Administrative Law Judge

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Pursuant to notice, a hearing convened on the record in the above matter on November 29, 2006, in Eugene, Oregon, before Administrative Law Judge (ALJ) Kate Donnelly. Christopher D. Moore, attorney at law, represented claimant, Kevin M. Lyon, who appeared personally. Jerome P. Larkin, Appellate Counsel, represented the employer, Monaco Coach Corp., and its insurer, SAIF Corporation. Exhibits 1 through 79 were admitted. The hearing was continued to receive written argument. The record closed with the receipt of claimant's Reply Argument on February 21, 2007.<sup>1</sup>

**ISSUES**

Claimant challenges the Workers' Compensation Division's (WCD's) August 22, 2006, Administrative Order holding that insurer is not liable to directly pay claimant interest on medical bills for which payment was stayed pending insurer's appeal of the compensability of the claim. If claimant prevails on that issue, claimant also requests that the Board order insurer to pay attorney fees to Mr. Moore.

**FINDINGS OF FACT**

On February 5, 2001, insurer denied claimant's workers' compensation claim for an injury to his back on January 2, 2001. (Ex. 12.) Claimant requested a hearing with the Workers' Compensation Board (WCB) to challenge the denial. (Ex. 18.)

On January 11, 2002, a WCB ALJ issued an Opinion and Order that set aside insurer's denial. (Ex. 22.) Insurer requested that the WCB review the Opinion and Order. (Ex. 23.)

On August 20, 2002, the WCB issued an Order on Review that affirmed the January 2002 Opinion and Order. (Ex. 24.) Insurer petitioned for judicial review. (Ex. 25.)

On October 13, 2003, the Oregon Court of Appeals affirmed the Board's Order on Review. (Ex. 32.)

Insurer accepted the claim for the January 2001 injury for an "L4-5 disc herniation condition. (Ex. 37.)

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<sup>1</sup> On March 16, 2007, the matter was transferred to ALJ Douglas Crummé for decision.

In January 2004, claimant requested a hearing with the WCB. Claimant raised, as an issue, that insurer had not complied with the mandate of the Court of Appeals' October 2003 order. (Ex. 29.)

On April 22, 2004, a WCB ALJ issued an Opinion and Order that ordered insurer to pay interest on medical bills on which payment was stayed during the pendency of insurer's appeal of the January 2002 Opinion and Order. (Ex. 32.) Insurer requested that the WCB review the Opinion and Order. (Ex. 41.)

On January 4, 2005, the WCB issued an Order on Review in *Kevin M. Lyon*, 57 Van Natta 10 (2005), that vacated the April 2004 Opinion and Order. The Order on Review concluded that the WCD had jurisdiction under ORS 656.248(12) over whether interest was due on the medical bill payments that were stayed during insurer's appeal of the compensability of the claim. (Ex. 41.) Claimant petitioned for judicial review. (Ex. 43.)

On April 19, 2006, the Court of Appeals affirmed the WCB's January 2005 Order on Review. *Lyon v. SAIF Corporation*, 205 Or App 182 (2006); Exs. 47 and 52.)

On May 15, 2006, claimant requested that the WCD order insurer to pay claimant interest due on the stayed medical bills. (Exs. 47 and 51.)

On August 22, 2006, the WCD issued an Administrative Order ordering that insurer "is not liable to pay [claimant] for interest on medical bills that were stayed during the appeals process." The WCD concluded that the stayed payments to medical providers were not "benefits withheld" on which interest would accrue under ORS 656.313(1)(b). The WCD concluded, as well, that any interest that was due would be payable to the medical providers rather than to claimant. (Ex. 76.)

Claimant requested the hearing in this matter to contest the WCD's August 2006 Administrative Order. (Ex. 77.)

After insurer's appeal of the 2002 Opinion and Order, claimant received medical services for his compensable back condition. SAIF stayed payment of bills for those services during the pendency of SAIF's appeal. Claimant's health care insurer, Pacific Source, paid those bills. Insurer has not paid interest on the stayed medical bill payments. (Ex. 32-2; testimony of claimant.)

### CONCLUSIONS OF LAW AND OPINION

Claimant challenges the WCD's August 2006 Administrative Order holding that insurer was not liable to directly pay claimant the disputed interest. If claimant prevails on that issue, he requests an attorney fee.

As determined in the parties' prior litigation, this is a medical bill dispute under ORS 656.248(12). *Kevin M. Lyon*, 57 Van Natta 10 (2005), *aff'd without opinion* (*Lyon v. SAIF*

*Corporation*, 205 Or App 182 (2006).<sup>2</sup> Therefore, the scope of review is *de novo* because the issue is not a medical service or treatment dispute under ORS 656.245, 656.247(3)(a), or 656.327. OAR 436-001-0225(1) and (2).

ORS 656.313 provides for the stay of certain compensation and for the accrual of interest on that compensation during an insurer's appeal. ORS 656.313 states, in pertinent part,

“(1)(a) Filing by an...insurer of a...request for [WCB] review or court appeal...stays payment of the compensation appealed, except for:

“(A) Temporary disability benefits...;

“(B) Permanent total disability benefits...;

“(C) Death benefits...;

“(D) Vocational benefits...;

“(b) If ultimately found payable under a final order, benefits withheld under this subsection shall accrue interest at the rate provided in ORS 82.010 from the date of the order appealed...through the date of payment...”

Claimant's requests for relief should be denied because, if interest is due on the stayed medical bills,<sup>3</sup> insurer should not pay that interest directly to claimant.

<sup>2</sup> The WCD has jurisdiction over disputes under ORS 656.248. ORS 656.704(3)(a).

<sup>3</sup> The terms “compensation” and “benefits” include “medical services” under ORS chapter 656. ORS 656.005(8). As a result, claimant argues that the stay of payment of compensation under ORS 656.313(1)(a) extends to medical services. Insurer argues that ORS 656.313(1)(a) does not extend to medical services because, under ORS 656.262(6)(a), claimant did not have a right to payment of compensation for medical services until insurer eventually accepted the claim after insurer lost its appeal on the compensability issue. Insurer's argument under ORS 656.262(6)(a) is not persuasive because that section relates to a different time period than the parties dispute in this matter. ORS 656.262(6)(a) provides that, with certain exceptions, an insurer is not required to pay for medical services pending acceptance or denial of a claim. Here, insurer first accepted or denied the claim in February 2001, when insurer issued its denial. So ORS 262(6)(a) excused insurer from paying for certain medical services through the date of that denial. In contrast, ORS 656.313(1)(a) concerns whether an insurer's duty to pay certain compensation is stayed for a period after the date of the order that the insurer appeals. Here, that period began with the date of the January 2002 Opinion and Order. So the fact that ORS 656.262(6)(a) excused payment of medical services prior to the February 2001 denial would not affect whether such payments were due during the period disputed here after the January 2002 Opinion and Order.

Whether insurer is required to pay any interest due under ORS 656.313(1)(b) directly to claimant requires interpretation of that statute to determine the intent of the legislature. To do so, we first examine the text and the context of the statute. *PGE v. Bureau of Labor and Industries*, 317 Or 606 (1993). The context includes provisions of the same statute and other related statutes. *Id.* at 611. If that inquiry fails to yield an unambiguous result, then pertinent rules of statutory construction may be considered, including legislative history that the parties offer. *Id.* at 612. See 174.010 and ORS 174.020.

ORS 656.313(1)(b) does not explicitly state to whom an insurer pays interest on medical services payments that are stayed under ORS 656.313(1)(a). Nevertheless, the text and context of the statute indicate that an insurer should pay that interest to the medical service provider or to a health care insurer that has already paid the bill rather than directly to the worker.

ORS 656.313(1)(b) shows a legislative intent that an insurer pay the interest on withheld payments for medical services to the same party that the insurer pays for the services. The “benefits” that the insurer withholds pending appeal under ORS 656.313(1)(a) “accrue” the interest. ORS 656.313(1)(b). In the context of medical services, the benefits that the insurer withholds are the payments to the providers for their services. As an intransitive verb, “accrue” means “1: to come into existence as a legally enforceable claim 2: to come by way of increase or addition 3: to be periodically accumulated whether as an increase or a decrease.” *Webster’s Seventh New Collegiate Dictionary* at 6 (G. & C. Merriam Company, Springfield 1969). The most persuasive interpretation of the term “accrue” in ORS 656.313(1)(b) is that the interest on withheld payments for medical services simply increases the amounts of the payments to the same payees.

ORS chapter 656 shows a legislative intent that insurers make medical services payments directly to the medical services providers or to a health insurance provider if the health insurance provider has already paid for the service.<sup>4</sup> ORS 656.248(1) provides that the WCD’s fee schedules “represent the reimbursement generally received for the services provided.” ORS 656.248(2) provides that that the insurer shall pay medical fees “when the vendor submits a billing for medical services.” ORS 656.248(4) provides that the WCD promulgates fees for the “providers to be paid.” ORS 656.313(4)(b) provides that, if a health insurance provider has already paid, the workers’ compensation insurer shall reimburse the health insurance provider and that such reimbursement “shall be paid directly to the health insurance provider.”<sup>5</sup>

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<sup>4</sup> OAR 436-009-0025 also provides that a worker may ask an insurer to reimburse the worker for “claim-related services” such as prescriptions that the worker pays himself. However, there is not an issue here concerning whether claimant would be entitled to such reimbursement because the evidence does not prove that claimant, as opposed to his health insurance provider, paid any of the stayed medical bills.

<sup>5</sup> In implementing ORS Chapter 656, the WCD’s rule, OAR 436-009-0015(1) provides,

“(1) An injured worker is not liable to pay for any medical service related to an accepted compensable injury or illness or any amount reduced by the insurer according to OAR chapter 436. A medical provider shall not attempt to collect payment for any medical service from an injured worker, except as follows...”

Claimant argues that another feature of ORS 656.313(4)(b) indicates that an insurer should pay the interest on stayed medical services payments to the worker. Claimant notes that the reimbursement under that section is “for the amount of claims paid by the health insurance provider pursuant to this section” and is “in addition to compensation or medical benefits the worker receives.” Claimant argues that the juxtaposition of these two provisions indicates a legislative intent that claimant is to receive the medical benefits, including ORS 656.313(1)(b) interest, beyond what the health insurance provider paid.

Claimant’s arguments under ORS 656.313(4)(b) are not persuasive. The phrase “pursuant to this section” indicates an intent to incorporate the rest of ORS 656.313, including the interest provisions under ORS 656.313(1)(b), into the reimbursement to the health insurer. The phrase that the reimbursement is “in addition to compensation or medical benefits the worker receives” does not address the question whether the medical benefits that claimant receives include interest under ORS 656.313(1)(b).

I conclude that, under the circumstances here, the text and context of ORS 656.313(1)(b) unambiguously indicate legislative intent that an insurer pay any interest due on stayed payments for medical services to payees other than the worker. Accordingly, claimant’s request that insurer be ordered to pay the disputed interest directly to claimant and to pay Mr. Moore an attorney fee should be denied.

### **ORDER**

**IT IS THEREFORE ORDERED** that the WCD’s August 22, 2006, Administrative Order denying claimant’s requests for relief is affirmed.

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The exceptions that OAR 436-009-0015(1) lists are circumstances where the medical services would not be compensable.