

In the Medical Issues of  
**Terry L. Myers, Claimant**  
Contested Case No: 07-056H  
**PROPOSED & FINAL ORDER**

August 21, 2007

SAIF Corporation, Petitioner  
TERRY L. MYERS, Respondent

Before Darren L. Otto, Administrative Law Judge

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A hearing was convened and concluded in the above entitled matter on July 31, 2007 in Portland, Oregon before Administrative Law Judge Darren L. Otto of the Workers' Compensation Board. Claimant was not present but was represented by his attorney Joseph DiBartolomeo by telephone. The employer, Clatsop Electric Inc., and its insurer, SAIF Corporation, were represented by their attorney Roy Miller. Lynette Henson was also present on SAIF's behalf. Exhibits 1 through 13 were received into evidence.

**ISSUES**

SAIF challenges that portion of an April 30, 2007 Administrative Order which awarded claimant's attorney a \$155.00 assessed fee pursuant to ORS 656.385(1). The issues are whether claimant's request for Director review was premature, whether ORS 656.385(1) applies under the circumstances of this case, and whether claimant's attorney was instrumental in obtaining a settlement of the dispute prior to a decision by the Director.

**FINDINGS OF FACT**

On October 5, 2005, claimant injured his left shoulder while working for the employer (Ex. 12-1). From November 7, 2006 through December 26, 2006, claimant obtained prescriptions for various medications relating to his compensable injury (Exs. 1 & 12-1). Those prescriptions were ordered by four different physicians and one physician assistant. *Id.* On November 11, 2006, however, claimant was enrolled in an MCO (Lynette Henson testimony). Therefore, on November 14, 2006, SAIF advised claimant's attending physician, A. Brooke Benz, M.D., to provide a list of his medications (Ex. 2).

On January 12, 2007, claimant requested Director review regarding prescriptions medications. Review was not initiated at that time because SAIF had not yet received any requests for prescription medication reimbursement. *Id.* On January 19, 2007, SAIF also informed claimant that a portion of the requested prescription reimbursement would not be approved because they were not prescribed by his attending physician (Ex. 4).

On January 24, 2007, claimant's attorney asked Dr. Benz if all of the prescription medications were reasonably related to claimant's compensable shoulder injury and Dr. Benz agreed (Ex. 5). On March 29, 2007, claimant's attorney forwarded Dr. Benz's opinion regarding the prescriptions medications to SAIF (Ex. 6). SAIF received claimant's attorney's request for prescription medication reimbursement and Dr. Benz's opinions on March 30, 2007 (Henson

testimony).

On April 5, 2007, claimant's attorney requested Director review concerning payment of the prescription medications. SAIF paid those prescription medications on April 17, 2007 (Ex. 10).

On April 30, 2007, an Administrative Order found no dispute remaining regarding payment and review of the prescription medications but awarded claimant's attorney an assessed fee of \$155.00, reasoning that he was instrumental in obtaining a settlement of the dispute prior to the decision by the Director pursuant to ORS 656.385(1).

### **FINDINGS OF ULTIMATE FACT**

SAIF had 30 days from March 30, 2007 to process claimant's request for reimbursement of prescription medications. Therefore, claimant's April 5, 2007 request for Director review of SAIF's failure to pay for those prescription medications was premature.

### **CONCLUSIONS OF LAW AND OPINIONS**

SAIF asserts that claimant's attorney is not entitled to an assessed fee because the request for Director Review was premature, claimant's attorney was not instrumental in obtaining a settlement, and ORS 656.385(1) does not provide for an assessed fee under the circumstances of this case.

SAIF did not receive Dr. Benz's authorization of the prescription medications until March 30, 2007 (Henson testimony; Ex. 6). Pursuant to OAR 436-009-0025(1), SAIF had 30 days from receipt of the reimbursement request to pay the undisputed portion of the prescription medications and provide specific reasons for non payment or reduction of payment. Since SAIF paid the prescription medications and provided specific reasons for non payment of other prescription medications on April 17, 2007, SAIF complied with the 30-day rule and any request for Director Review of SAIF's decision prior to April 29, 2007 was premature. When claimant's attorney requested Director Review on April 5, 2007, SAIF still had 24 days to process his request for reimbursement. Thus, claimant's attorney was not instrumental in obtaining SAIF's approval of payment of the prescription medications and is not entitled to assessed fee. That portion of the Administrative Order will be modified.

### **ORDER**

IT IS HEREBY ORDERED that that portion of the April 30, 2007 Administrative Order which awarded claimant's attorney a \$155.00 assessed fee is reversed and reduced to zero. The remainder of the order is approved.