

In the Medical Service Dispute of  
**Douglas D. Paulson, Claimant**

Contested Case No: 07-076H

**PROPOSED & FINAL ORDER**

September 17, 2007

DOUGLAS D. PAULSON, Petitioner  
SAIF CORPORATION, Respondent

Before Geoffrey G. Wren, Administrative Law Judge

Pursuant to notice, a hearing was scheduled for June 21, 2007 before the undersigned administrative law judge. Prior to that time, the parties, through counsel, notified the Hearings Division that the matter could be submitted on the documentary record with written closing arguments. George J. Wall represents claimant. The employer, Paulsons Timber Cutting, Inc., and its insurer, SAIF Corporation, are represented by James B. Northrop. The record closed on September 17, 2007.

Exhibits 1-75 are admitted.

**ISSUES**

*Entitlement to PCE:* Claimant challenges the Director's March 22, 2007 order that SAIF is not liable for payment of a physical capacities evaluation requested by Dr. Blair.

*Attorney Fee:* In the event claimant prevails, he seeks award of an assessed attorney fee.

**STATEMENT OF FACTS**

Claimant sustained a compensable injury on January 17, 2006. SAIF accepted a claim for cervical strain, thoracic strain, right orbital contusion, left ear contusion, occiput hematoma, and fracture right C1 lateral mass. (Ex. 17; *see* Ex. 50).

Claimant ultimately came under the care of Dr. Watts. (Ex. 37). She declared claimant medically stationary as of September 11, 2006. (Exs. 44, 46).

On December 11, 2006, SAIF notified claimant that it had deemed him ineligible for vocational assistance on the ground that he had been released to regular work on September 11, 2006 and therefore did not meet the eligibility requirement set out in OAR 436-120-0320(10)(c)(A). (Ex. 62).

Claimant began treating with Dr. Blair on December 20, 2006. The doctor reviewed "[e]xtensive clinic notes" and performed a physical examination. To answer the question whether claimant could return to his work at injury, he recommended a physical capacities evaluation ("PCE") and that he would see the claimant after completion of that evaluation. (Ex. 63; *see* Exs. 65, 67).

Claimant scheduled a PCE for January 11, 2007. (Ex. 64). SAIF refused to authorize payment for the PCE. (Ex. 66).

### STATEMENT OF THE CASE

On February 5, 2007, claimant filed a request for administrative review under the title “Request for Review of Medical Dispute.” Claimant asserted that denial of authorization for the PCE was inconsistent with ORS 656.340(15). The Director wrote SAIF on March 5, 2007, asking SAIF to fill out a Specification of Disputed Medical Issues form. (Ex. 71). SAIF duly filled out and returned the form, asserting that the PCE was excessive, inappropriate, and/or ineffectual and/or that the service was not a compensable medical service under ORS 656.245(1)(c). (Ex. 74).

The Director reviewed the dispute under ORS 656.245 and OAR 436-010-0008. By Administrative Order dated March 22, 2007, the Director ordered that SAIF was not liable for the PCE recommended by Dr. Blair. The Director reasoned that the record did not include documentation that Dr. Blair recommended the PCE as a diagnostic service, for palliative care purposes, or as a curative care. The Director further found that claimant’s vocational eligibility had been determined prior to the request for the PCE. For that reason, the Director concluded that claimant was not entitled to a PCE. (Ex. 74).

On April 6, 2007, claimant requested a hearing regarding medical services. (Ex. 75).

### CONCLUSIONS OF LAW AND OPINION

Claimant challenges the Director’s March 22, 2007 Administrative Order. He contends that the Director erred in not finding SAIF liable for the PCE recommended by Dr. Blair for two reasons: (1) ORS 656.340(15) requires payment for the PCE, and the statute does not set a time limit on when a PCE may be requested or limit the time for a request to a period prior to determination of vocational eligibility, and (2) the PCE is compensable as a diagnostic medical service under ORS 656.245(1)(c)(H). Claimant does not challenge the Director’s conclusion that the PCE was not payable as either palliative or curative care.

I begin with claimant’s second argument. ORS 656.245(1)(c)(H) provides that medical services “necessary to diagnose a claimant’s condition” are compensable after a claimant is declared medically stationary. The Director concluded that SAIF did not have to pay for the PCE as a diagnostic service because the record did not include documentation that Dr. Blair requested the PCE as a diagnostic service. (Ex. 74).

Jurisdiction to determine compensability of the PCE as a diagnostic medical service lay with the Hearings Division of the Workers’ Compensation Board, not the Director. *Hazel M. Hand*, 59 Van Natta 1028, 1034 (2007); *Hazel M. Hand*, 11 CCHR 297 (2006). The Director’s determination that the PCE was not compensable as a diagnostic service must be vacated. Claimant has not requested a hearing challenging denial of payment for the PCE as a matter concerning a claim. I thus do not have jurisdiction to resolve the parties’ dispute.

Claimant's primary argument that ORS 656.340(15) required payment for the PCE likewise raises a jurisdictional problem. Review of Director orders pertaining to medical service disputes is subject to a different standard of review than review of Director orders pertaining to vocational services. Under ORS 656.247(3)(a) and OAR 436-001-0225(2), I may set aside or modify a Director's order regarding a medical service dispute only if it is not supported by substantial evidence in the record or if it reflects an error of law. No new medical evidence or issues may be admitted or considered. In a vocational assistance case, I may modify a director's order if it violates a statute or rule, exceeds the Director's statutory authority, was made upon unlawful procedure, or was characterized by abuse of discretion or clearly unwarranted exercise of discretion. ORS 656.283(2)(c); OAR 436-001-0225(3). The applicable standards of review require initial determination whether claimant seeks payment for the PCE as a medical service or as a vocational service.

Claimant contends in his reply argument that "it would be quite a stretch to characterize a PCE as a vocational rather than a medical dispute." This argument seems at odds with the position claimant asserted in his opening brief that the requested PCE "should be considered as separate and distinct from medical services enumerated in ORS 656.245(1)(c)." I agree with claimant's apparent position in his opening brief that payment for the PCE under ORS 656.340(15) is not a matter of payment for a medical service. To the extent that ORS 656.340(15) requires payment for a medical service, it does so only "in conjunction with vocational assistance or determination of eligibility for such assistance." ORS 656.340(15). Disagreement about payment for the PCE, accordingly, presents a vocational assistance dispute, not a medical services dispute.

The Director stated that he reviewed the issue of nonpayment under ORS 656.245 and OAR 436-010-0008. That statute and rule pertain to disputes regarding medical services. Although the Director stated that he reviewed this matter as a medical services dispute, he went ahead and determined that the PCE was not compensable under ORS 656.340(15). The Director concluded that SAIF did not have to pay for the PCE because claimant's eligibility for vocational services already had been determined. (Ex. 74). Insofar as the Director in fact addressed compensability of the PCE under ORS 656.340(15), I conclude that the Director invoked his jurisdiction to resolve a vocational assistance dispute pursuant to ORS 656.283(2)(b).<sup>1</sup>

SAIF argues that the Director erred in invoking his jurisdiction over vocational assistance disputes because claimant did not bring this case as a vocational assistance dispute. Claimant titled his request for administrative review "Request for Review of Medical Dispute." The body of his request, however, made clear that claimant sought administrative review under ORS 656.340(15). Claimant, in other words, sought review regarding a vocational services issue. I conclude that the Director properly invoked his jurisdiction.

I nonetheless conclude that I lack jurisdiction to address claimant's arguments under ORS 656.340(15) for the reason that claimant did not challenge the Director's order as an order affecting his entitlement to vocational assistance. Claimant filed a request for hearing only with respect to medical services. (Ex. 75). As no hearing request is before me with respect to the

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<sup>1</sup> That statute provides that if a claimant is dissatisfied with "an action of the insurer ... regarding vocational assistance," the claimant must request administrative review by the Director.

Director's decision under ORS 656.340(15), I lack jurisdiction to modify the Director's order. See *Leah M. Fritz*, 54 Van Natta 632 (2002); *Michael R. Petkovich*, 34 Van Natta 98 (1982) (jurisdiction is limited to issues raised); ORS 656.704(2)(a).<sup>2</sup>

### ORDER

*IT IS HEREBY ORDERED* that the March 22, 2007 Administrative Order of Dismissal is vacated to the extent that it addressed payment for the PCE as a diagnostic medical service.

*IT IS FURTHER ORDERED* that claimant's request for hearing otherwise is dismissed.

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<sup>2</sup>

That statute provides:

A party dissatisfied with an action or order regarding a matter other than a matter concerning a claim under this chapter may request a hearing on the matter in writing to the director. The director shall refer the request for hearing to the Workers' Compensation Board for a hearing before an Administrative Law Judge. Review of an order issued by the Administrative Law Judge shall be by the director and the director shall issue a final order that is subject to judicial review as provided by ORS 183.480 to 183.497.