

In the Reimbursement for Widow Benefits of

Brian C. Smallwood DCD, Claimant

Contested Case No: 07-075H

PROPOSED & FINAL ORDER

November 21, 2007

SAIF CORPORATION, Petitioner

DCBS WORKERS' COMPENSATION DIVISION, Respondent

Before Kirk Spangler, Administrative Law Judge

This case was set for a September 19, 2007 hearing in Bend, Oregon, before Administrative Law Judge Kirk Spangler. However, prior to that date the parties moved to submit the case on the written record. Their joint motion was granted. The deceased worker's surviving spouse elected to not appear. The employer, Bend Heating & Sheet Metal, Incorporated, insured by the SAIF Corporation, was represented by Julie Masters, SAIF Appellate Counsel. The Workers' Compensation Division (WCD) was represented by Carol Parks, Senior Assistant Attorney General. Exhibits 1 through 6, including A through 4a, were received in evidence. Closing arguments were submitted in writing. The record was closed on October 23, 2007.

ISSUE

Whether SAIF is entitled to reimbursement from the Workers' Benefit Fund (WBF) for death benefits payable to claimant's widow?

FINDINGS OF FACT

The deceased worker sustained a compensable injury in February 1998. After his five year aggravation rights expired under ORS 656.273, he died in his sleep. Subsequently, his surviving spouse filed a claim against SAIF for a consequential condition (*i.e.*, the deceased worker's death due to over ingestion of medications prescribed for his accepted conditions). SAIF then denied the claim, but the surviving spouse filed a Request for Hearing to appeal the denial. The case proceeded to hearing before an ALJ who by Opinion and Order ordered that SAIF's denial was set aside. Thereafter, SAIF appealed the ALJ's Order, but the Board affirmed the ALJ's decision by way of an Order on Review. In doing so, the Board stated: "[C]laimant is entitled to survivor's benefits under ORS 656.204."

Pursuant to the Board's Order, SAIF then voluntarily reopened the deceased worker's claim under ORS 656.278 and paid survivor's benefits to his widow. Consequently, SAIF sought reimbursement from the WBF for the amounts that it had paid to the surviving spouse. However, the WBF refused to reimburse SAIF. Consequently, SAIF brought the instant action to compel reimbursement from the WBF.

ULTIMATE FINDINGS OF FACT

SAIF voluntarily reopened the deceased worker's claim pursuant to ORS 656.278 and the WBF is obligated to reimburse SAIF as required under ORS 656.625.

CONCLUSIONS OF LAW AND OPINION

SAIF argues that it should receive reimbursement from the WBF under ORS 656.625 for either of the following reasons: (1) the deceased worker's death was found compensable as a consequential condition and it is, therefore, a new medical condition for the purposes of own motion reopening; and (2) SAIF voluntarily reopened the deceased worker's claim under ORS 656.278 to pay death benefits.

The WCD, however, argues that death benefits are payable solely under ORS 656.204, which does not provide for reimbursement from the WBF. Thus, since such benefits are not payable under ORS 656.278(1) or (5), which requires reimbursement from the WBF, the WCD reasons that it is not required to reimburse SAIF.

Here, the deceased worker died as a compensable result of ingesting medication that was prescribed to help treat his compensable injury. His death occurred after the expiration of his five year aggravation rights under ORS 656.273. Thus, at the time of his death his right to aggravation benefits lied exclusively with the Board's own motion jurisdiction under ORS 656.278.

That being said, it is important to remember in this case that the underlying consequential condition claim for the deceased worker's death was argued and presented as a pure compensability dispute. That is, both the ALJ and the Board applied ORS 656.005(7)(a)(A), weighed the evidence, and decided whether the surviving spouse had met her burden of proof – as in any other compensability dispute. Thus, although both the ALJ and the Board were clearly aware of the procedural posture of the case – a death benefits case carried forward by the deceased worker's surviving spouse – neither of them were presented with any issue concerning the proper processing of the claim.

However, the Board was not wholly silent in what it was ordering SAIF to do. That is, in the last sentence in the body of its Order on Review, at page 5, the Board stated: "Accordingly, claimant is entitled to survivor's benefits under ORS 656.204." The Board also affirmed the ALJ's Opinion and Order, who ordered that SAIF's denial of the surviving spouse's claim for a consequential condition was "set aside."

Thus, SAIF subsequently did what it had been twice ordered to do – to accept and process the surviving spouse's claim for a consequential condition (*i.e.*, claimant's death). Given that the claim was in own motion status, however, the only means possible for SAIF to comply with the Board's order (to pay survivor's benefits under ORS 656.204) was to voluntarily reopen claimant's claim under ORS 656.278 (because ORS 656.278(1)(b) directs that the Board's own motion authority "shall" continue in those cases in which "[t]he worker submits and obtains acceptance of a claim for a compensable new medical condition * * *").

Nonetheless, the WCD refused to reimburse SAIF for its payment of death benefits despite the plain directive and intent of the legislature. That is, ORS 656.625(1) states:

“There is established a Reopened Claims Program for the purpose of reimbursing the additional amounts of compensation payable to injured workers that results from any award made by the Workers’ Compensation Board or voluntary claim reopening pursuant to ORS 656.278 after January 1, 1988.”

WCD’s statutory construction arguments notwithstanding, I decline its invitation to conclude that the legislature intended ORS 656.625(1) to be applied in an absurdly narrow manner that would deprive SAIF of reimbursement. Whether the compensable consequential condition (that was ordered accepted and processed by both the ALJ and the Board) was brought forward by a claimant or by a deceased worker’s surviving spouse, should not be outcome determinative and should not allow the WCD to circumvent *the legislature’s intent that amounts paid by way of a voluntary claim reopening under ORS 656.278 must be reimbursed*. Even assuming *arguendo* that the Board ordered SAIF to do something that it was not authorized to do, the WBF must reimburse SAIF. *EBI Companies v. Department of Insurance and Finance*, 114 Or App 356 (1992).

For all of the above reasons, I conclude that the WBF should reimburse SAIF for the additional amounts that it paid to the surviving spouse as it was ordered to do by both the ALJ and the Board.

ORDER

IT IS THEREFORE ORDERED that the Workers’ Benefit Fund shall reimburse SAIF for the death benefits that it paid to the deceased worker’s surviving spouse.