

In the ORS 656.245 Medical Services Dispute of

**Tin T. Tran, Claimant**

Contested Case No: 07-023H

**FINAL ORDER**

September 12, 2007

TIN T. TRAN, Petitioner

SAFECO INSURANCE COMPANY, Respondent

Before John Shilts, Workers' Compensation Division Administrator

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Petitioner claimant Tin T. Tran, on his own behalf, and respondent insurer SAFECO Insurance Company, through its attorney Neil W. Jones, timely filed exceptions to Workers' Compensation Board Administrative Law Judge (ALJ) Nicholas M. Sencer's May 23, 2007 Proposed and Final Order. This matter comes before the director for a final order. The issues are whether the director has jurisdiction and whether there are any factual or legal errors in the Medical Review Unit's (MRU) Orders of Dismissal. For the reasons below, I adopt and affirm as corrected and supplemented below.

I adopt the ALJ's findings of fact with one correction. On page 2 of the proposed order it states, "Claimant requested reconsideration of Judge Somers' Opinion and Order, which resulted in an Order of Abatement dated October 6, 2006." Rather it was insurer, not claimant, that filed the Motion for Abatement and Motion for Reconsideration of the Opinion and Order for which ALJ Somers issued the October 6, 2006 Order of Abatement. The proposed order is corrected accordingly.

Claimant raises two issues in his exceptions. First, claimant argues that his case was unfair because the Vietnamese interpreter, Hinh Dong, did not speak English well. Second, claimant argues that he did not understand the law at the hearing.

Insurer takes exception to ALJ Sencer's finding that jurisdiction is appropriate, and requests the exclusion of documents attached to claimant's exceptions.

The director reviews the issue of jurisdiction de novo and the issue of whether there are any factual or legal errors in MRU's Orders of Dismissal for substantial evidence or errors of law. OAR 436-001-0225.

Insurer argues that ALJ Sencer erred in denying insurer's motion to dismiss based on lack of jurisdiction. Insurer contends that MRU's January 29, 2007 dismissal orders, which claimant timely appealed, became moot. MRU's January 29, 2007 dismissal orders were based on ALJ Somers' November 28, 2006 Opinion and Order of Reconsideration. ALJ Somers issued an Order of Abatement on January 11, 2007. However, the Order of Abatement abated the December 15, 2006 Order Denying Reconsideration, not the November 28, 2006 Opinion and Order.

On January 29, 2007, ALJ Somers issued a Second Order on Reconsideration adhering to her November 28, 2006 Opinion and Order. Then on February 16, 2007, MRU issued Amended

Administrative Orders of Dismissal, based on the January 29, 2007 Second Order on Reconsideration. However, ALJ Somers' November 28, 2006 Opinion and Order on Reconsideration was never abated. MRU's January 29, 2007 orders of dismissal were likewise not abated, and did not become moot as insurer contends. By his February 3, 2007 letter claimant timely requested a hearing regarding MRU's January 29, 2007 orders. The director has jurisdiction to review this matter.

Insurer also requests the exclusion of the documents attached to claimant's exceptions. Claimant's new evidence is not admissible in a substantial evidence review. *Kraft v. Liberty Northwest Co.*, 205 Or App 59, 62-63 (2006). Additionally, I do not consider claimant's reference to the mediation attempts between the parties. Mediation communications are confidential and may not be disclosed. OAR 440-055-0008(7).

Regarding claimant's arguments, claimant should have raised his dissatisfaction with the Vietnamese interpreter, Mr. Dong, before or during the hearing before ALJ Sencer. OAR 438-020-0010(3) requires that "[i]f there is an objection to the appointed interpreter, the objecting party shall communicate the objection to the assigned ALJ within a reasonable time." Additionally, claimant received a notice dated April 18, 2007 notifying him that Mr. Dong would interpret for the hearing. In the notice, claimant was told to contact the assigned ALJ if he had an objection to the choice of interpreter. There is no indication in the record that claimant raised an objection to Mr. Dong as the interpreter.

Secondly, claimant argues that he did not understand the law at the hearing. ORS 183.413 requires each party to a contested case to be informed of rights and procedures relating to evidence, the record, and other matters outlined in ORS 183.413(2). This information may be provided written or orally before the hearing starts. ORS 183.413(3). ALJ Sencer provided claimant with a written notice of hearing rights and procedures. Claimant acknowledged receipt of this document and stated he had no questions.

I agree with ALJ Sencer's determination that there were no factual or legal errors in MRU's amended orders. The board has authority over matters concerning a claim, including disputes that require a determination of whether a sufficient causal relationship exists between medical services and an accepted claim. ORS 656.704(3)(b). Because ALJ Somers found that the proposed stellate ganglion block and the two prescription medications at issue were not due to the accepted claim, MRU was correct in finding that all issues raised were resolved and there was nothing for the director to review. Therefore, MRU's dismissal of the matter was appropriate.

**IT IS HEREBY ORDERED** the May 23, 2007 Proposed and Final Order is adopted and affirmed as corrected and supplemented.