

In the ORS 656.260 Managed Care Dispute of

**Allen W. Van Dyke, Claimant**

Contested Case No: 07-063H

**PROPOSED & FINAL ORDER**

October 10, 2007

ALLEN W. VAN DYKE, Petitioner

SAIF CORPORATION, Respondent

Before Elizabeth Fulsher, Administrative Law Judge

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Pursuant to notice, a hearing was convened on August 9, 2007 in Bend, Oregon before Administrative Law Judge Fulsher. Claimant was represented by his attorney, Bruce Brewer. The employer, Department of Fish and Wildlife, and its insurer, SAIF Corporation, were represented by their attorney, James Booth. The record was left open for written closing arguments. The record closed on September 13, 2007, upon expiration of the time for claimant to submit a reply argument.

Exhibits 1 through 88, 87A and 87B were admitted into evidence at the hearing.

**ISSUE**

Whether the Workers' Compensation Division correctly determined that the surgery proposed by Dr. Watson is not appropriate.

**SUMMARY OF FINDINGS**

Because the standard of review is for "substantial evidence," the following findings are summarized from the April 19, 2007 Administrative Order. *See Liberty Northwest Insurance Corporation v. Kraft*, 205 Or App 59 (2006).

Claimant sustained a compensable right shoulder injury on April 2, 2001. SAIF accepted the conditions of right shoulder strain and longitudinal split in the rotator cuff within the supraspinatus area of the right shoulder. (Ex. 31).

On February 25, 2002, claimant was enrolled in Oregon Health Systems, a managed care organization (MCO). (Ex. 23). On October 10, 2002, claimant had right shoulder surgery for recurrent rotator cuff tear with anterior deltoid dehiscence with severe fraying of the biceps tendon. (Ex. 36).

On October 18, 2006, Dr. Watson requested authorization from SAIF of arthroscopy of the right glenohumeral joint with repeat SAD, open adhestectomy, possibly open rotator cuff repair, possible bicep tenodesis versus grooveplasty. (Ex. 52). In response, SAIF scheduled a consultation examination with Dr. Borman. (Ex. 53). Dr. Borman examined claimant on November 16, 2006. He did not believe the proposed surgical procedures seemed necessary or appropriate. (Ex. 54). Dr. Watson reviewed Dr. Borman's report and responded on November 30, 2006. Dr. Watson clarified that he felt claimant had adhesions and he wanted to proceed

with adhesionectomy. (Ex. 56). SAIF requested Director review of the proposed surgery on December 18, 2006. (Ex. 57).

To determine whether the medical treatment proposed by Dr. Watson was appropriate, the Director requested that Dr. Ballard, an orthopedic surgeon, examine claimant and review claimant's records. Dr. Ballard examined claimant on February 22, 2007. Dr. Ballard issued a report concluding that he did not think that any further surgery on claimant was appropriate or would be of long lasting benefit. He indicated that there was no evidence of a pseudodislocation and that claimant had a lot of atrophy of his rotator cuff muscles and atrophy of his deltoid. The surgical procedure would not correct any of those deficiencies. (Ex. 85).

On March 19, 2007, Dr. Wigle saw claimant for his right shoulder pain. Dr. Wigle did not believe that another attempt to get the rotator cuff to heal with a surgical procedure would be successful. Instead, he recommended a steroid injection and referral for pain management. (Ex. 87A).

On April 19, 2007, the Workers' Compensation Division issued an Administrative Order. Relying on the opinions of Drs. Borman, Ballard and Wigle, the Director found that the surgery proposed by Dr. Watson was not medically appropriate. (Ex. 87B). Claimant requested a hearing regarding the Administrative Order. (Ex. 88).

### CONCLUSIONS OF LAW AND OPINION

The issue is the appropriateness of surgery proposed by Dr. Watson. Pursuant to OAR 436-001-0225(2), in medical service and medical treatment disputes under ORS 656.245, 656.247(3)(a), and 656.327, and managed care disputes under ORS 656.260(16), the administrative law judge may modify the Director's order only if it is not supported by substantial evidence in the record or if it reflects an error of law. In addition, new medical evidence or issues may not be admitted or considered. Substantial evidence exists to support a finding when the record, viewed as a whole, would permit a reasonable person to make that finding. See *Armstrong v. Asten-Hill Co.*, 90 Or App 200 (1988).

Claimant argues that Dr. Watson intended the surgery to be diagnostic to see if there was instability. Claimant contends that Dr. Borman did not address the diagnostic portion of the procedure. On this basis, claimant contends that the Medical Review Unit's decision that the surgery is inappropriate is not supported by substantial evidence. SAIF responds that the surgery was not really a diagnostic procedure and that even if it was diagnostic, it was still not appropriate.

In his November 30, 2006 letter, Dr. Watson indicated that he believed claimant had adhesions and he wanted to do an adhesionectomy to improve claimant's symptoms. Dr. Watson indicated that the surgery was "primarily to approach the pericapsular adhesions." (Ex. 56-2). Thus, any diagnostic purpose of the surgery was secondary. Moreover, there is no dispute over the compensability of claimant's shoulder condition. The only dispute concerns the appropriateness of the medical treatment (surgery). Dr. Ballard and Dr. Borman opined that the proposed surgery was not appropriate and would not benefit claimant. (Exs. 54; 84). As SAIF

argues, Dr. Borman specifically addressed the diagnostic arthroscopy portion of Dr. Watson's proposed surgery and indicated that he doubted any new information not already present in the medical records would be obtained. (Ex. 54-12).

Based on this record, a reasonable person could reach the conclusion the Director reached. Therefore, I conclude that the Director's decision that the proposed surgery is not appropriate is supported by substantial evidence. Under such circumstances, the Director's order will be affirmed.

### **ORDER**

The Administrative Order dated April 19, 2007 is affirmed.