

In the Request for Hearing of
Tami Crittendon, Claimant
Contested Case No: 08-003H
PROPOSED & FINAL ORDER

April 22, 2008

SAIF CORPORATION, Petitioner
TAMI CRITTENDON, Respondent

Before Emerson G. Fisher, Administrative Law Judge

Pursuant to notice, a hearing was convened before the undersigned Administrative Law Judge (ALJ) in Bend, Oregon on April 8, 2008. The SAIF Corporation, and its insured, Cardinal Employers, were represented by attorney Tom Sieg. Claimant, Tami Crittendon, was represented by attorney Glen Laskin. The proceedings were recorded by the ALJ.

The record closed April 8, 2008.

The documentary evidence received consists of Exhibits 1 through 11, A through C, 1A, and 10A

ISSUES

SAIF raised one issue, apportionment/monetary adjustment.

FINDINGS OF FACT

Claimant filed a claim for a bilateral hand, wrist, and arm condition with SAIF's insured, which was denied in November 2006. (Ex. 3-4). Claimant contested the denial, and a hearing on the merits of the denial was convened on May 8, 2007.¹ (Ex. 3-1).

A June 7, 2007 Opinion and Order determined that SAIF's insured and an unjoined concurrent employer (Kang Pai) were jointly responsible for claimant's condition. (Ex. 3-7). The Opinion and Order declined to apportion compensation and attorney fees between SAIF and Kang Pai and directed SAIF to contact the Director for a determination of the apportionment issue. (Ex. 3-8).

SAIF requested Board Review and petitioned the Director for apportionment of compensation/attorney fees. (Exs. 4; 6; 7; and 9).

Explaining that OAR 436-060-0195 allows the Director to apportion benefits or order a monetary adjustment only between carriers against whom a claim has been made, and reasoning that no claim had been filed against Kang Pai, a December 28, 2007 Proposed and Final Order of Monetary Adjustment/Apportionment declined to apportion the compensation/attorney fees

¹ At hearing, SAIF amended its denial such that it denied only responsibility for claimant's bilateral upper extremity condition. (Ex. 3-4).

awarded by the June 7, 2007 Opinion and Order between SAIF and Kang Pai. (Ex. 8). SAIF requested a hearing.

A January 8, 2008 Order on Review, as reconsidered on January 17, 2008, affirmed the June 7, 2007 Opinion and Order. (Exs. 9; 11).

CONCLUSIONS OF LAW AND OPINION

During the hearing, SAIF acknowledged that the Director's rules do not contemplate a monetary adjustment (apportionment) between carriers where no claim has been made against an employer that has been determined to be jointly responsible for a compensable condition. Consequently, SAIF does not request that I modify the December 28, 2007 Proposed and Final Order of Monetary Adjustment/Appportionment by ordering Kang Pai to pay a portion of the compensation due claimant. Rather, asserting that medical evidence presented during the May 8, 2007 hearing established that work for its insured was only a 27 percent cause of the compensable condition, SAIF seeks an order allowing it to pay only 27 percent of the compensation due claimant. In other words, SAIF seeks "equitable relief" in the form of an order that effectively reduces claimant's benefits by 73 percent.

Because the record establishes that no claim has been made against Kang Pai, and because SAIF agrees that the Director's rules do not contemplate apportioning compensation to a carrier in the absence of claim against the carrier, the December 28, 2007 Proposed and Final Order of Monetary Adjustment/Appportionment must be affirmed.²

ORDER

The December 28, 2007 Proposed and Final Order of Monetary Adjustment/Appportionment is affirmed.

² SAIF's request for "equitable relief" is addressed in an April 21, 2008 Opinion and Order with the same WCB case number.