

In the Compensation of  
**Guy A. Landis, Claimant**  
Contested Case No: 07-102H  
**ORDER REMANDING**  
February 4, 2008  
GUY A. LANDIS, Petitioner  
LIBERTY NORTHWEST INSURANCE CORPORATION, Respondent  
Before Robert Brazeau, Administrative Law Judge

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This matter was scheduled for a hearing in Klamath Falls, Oregon on December 11, 2007 before Administrative Law Judge Donnelly. Claimant is represented by Jodie Phillips Polich, Attorney at Law. Lithia Motors Support Services and Liberty Northwest Insurance Corporation are represented by Adam Stamper, Attorney at Law.

Prior to the hearing date, the parties advised ALJ Donnelly that this matter could be decided on the record and closing arguments. Therefore, no hearing was held. The record closed on January 14, 2008, at which time closing arguments were completed. The case was transferred to Administrative Law Judge Brazeau on January 30, 2008.

Exhibits 1 through 63, the Department's record, as well Exhibits 58A, 62A, 63A (formerly Exhibit 65), 66 and 67, are hereby admitted into evidence. Proposed Exhibit 64 is a duplicate of an exhibit that appears in the Department's record and is, therefore, withdrawn. Exhibit 65 was renumbered Exhibit 63A to be consistent with the chronology of the record.

### ISSUE

Claimant requests a hearing from the Administrative Order of Dismissal dated July 26, 2007, arguing that the Board's Hearings Division should issue an order on the merits. The employer argues that this matter should be remanded to the director for a decision on the merits.

On February 21, 2006, claimant's physician requested authorization from the insurer to perform surgery for the implant of a lumbar spine percutaneous neurostimulator. Following additional medical information from several physicians, claimant's counsel filed a request for administrative review with the Medical Review Unit, seeking a finding that claimant's requested neurostimulator implant be found to be appropriate medical treatment. The request for review was filed on July 10, 2007. On July 12, 2007, the Department notified the insurer and Dr. Kellar, who had proposed claimant's treatment, of claimant's request for review and requested that the insurer respond with a Specification of Disputed Medical Issues form and all relevant medical information. On or about that same date, the insurer completed the Medical Issues form by checking "no" to all available boxes listing reasons for the disapproval of claimant's medical service request.

On July 23, 2007, the insurer returned a second copy of the Department's requested Specification of Disputed Medical Issues form, first checking a box indicating that claimant's medical service was disapproved because the service was for a new/omitted condition and that a

decision on the compensability of that condition was pending. The insurer then crossed out that box, however, and circled the “no” box in that regard. Finally, it added the words “pending decision” to the boxes.

On July 26, 2007, the Department issued an Administrative Order of Dismissal, dismissing without prejudice claimant’s request for review on the ground that there was no substantive issue ripe for review. In that regard, the Department found that claimant had requested formal written acceptance of a “new or omitted medical condition,” the processing of which was pending at the time of review. The Department, therefore, found that until the insurer fully processed claimant’s new or omitted medical condition claim, the Department could not decide the medical treatment issue raised by claimant.

Claimant requested reconsideration of the Department’s Dismissal Order on July 28, 2007, asserting that there had been no new or omitted medical condition claimed and that the medical treatment issue was ripe for review.

On August 14, 2007, the Department’s Medical Reviewer, Ms. Friedrichsen, wrote to the insurer, purporting to confirm the details of a conversation said to have occurred on “July 6, 2007”<sup>1</sup> regarding claimant’s request for reconsideration. Ms. Friedrichsen advised that she had discussed the original Specification of Disputed Medical Issues form submitted by the insurer on July 12, 2007, which had checked “no” to all possible reasons for denying claimant’s claimed medical treatment. The Reviewer then indicated that the insurer had told her that the initial form was in error, *i.e.*, that it should have indicated claimant’s request was denied because the requested medical service was not for a condition causally related to claimant’s accepted conditions. The Reviewer then acknowledged that she had asked the insurer to issue a corrected Disputed Medical Issues form, specifying the reason for the insurer’s denial. She then advised: “If this accurately captures our conversation and your position, I will proceed as though the yes box on causal relationship was marked . . .”

On August 16, 2007, claimant withdrew his July 28, 2007 request for reconsideration of the Administrative Order of Dismissal. On August 20, 2007, the Department notified claimant’s counsel that the Department had received the withdrawal letter and that the Department would, therefore, take no additional action. On the same date, claimant filed a request for a contested case hearing under ORS 656.704(2) with the Department which, in turn, forwarded the request to the Board’s Hearings Division.

Claimant asserts that the Department incorrectly dismissed his request for administrative review and asks that the undersigned issue an “administrative order” on the merits, finding the requested medical services to be appropriate. The insurer responds that this matter should be remanded to the Department for a decision on the merits, arguing that the dismissal order issued in error. Claimant replies that there is no authority for such a remand.

After carefully reviewing this complex and confusing record, I conclude that it is appropriate to remand this matter to the Department for a review of its Administrative Order of

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<sup>1</sup> In the context of the Department’s August 14, 2007 letter, I conclude that the author’s reference to “July 6, 2007” was a scrivener’s error and that the author intended to reference “August 6, 2007.”

Dismissal. The confusion in this matter came from Exhibits 58 and 58A, the first of which checked all reason-for-denial boxes “no,” while the second attempted to clarify the reason for the denial but perhaps confused matters even more. The Department issued its order on July 26, 2007, erroneously believing that there was a pending issue involving a new or omitted medical condition. After claimant requested reconsideration and advised the Department that no such issue existed, the Medical Reviewer attempted to clarify the reason for the insurer’s denial through a phone call to the carrier on August 6, 2007. The Reviewer apparently continued to misunderstand the insurer, however, for her August 14, 2007 follow-up letter continued to indicate that there remained a pending issue in litigation.

OAR 436-001-0170(5) provides: “Where appropriate, the administrative law judge may remand a dispute to the director for further administrative action.” This case appears to be an appropriate one for remand. I conclude that the Medical reviewer never understood that the issue raised in claimant’s request for review was ripe for a decision on the merits. Her confusion is understandable, given the conflicting information she received from the carrier. Under these circumstances, I conclude that the Reviewer should be given the opportunity to essentially “start over” by approaching the case in the proper context. In so doing she may review the additional materials that were submitted by the parties to the undersigned, and then ultimately issue an appealable order on the merits of the medical services issue initially presented. Rather than going behind what I have found to be a procedurally incorrect order, and issuing my own order on the merits, I find it appropriate for the Department to review the merits first, subject to additional appeal by the party that does not prevail.

### **ORDER**

The Administrative Order of Dismissal dated July 26, 2007 is vacated. This matter is hereby remanded to the Workers’ Compensation Division for further proceedings consistent with this order.