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In the ORS 656.340 Vocational Assistance Dispute of

**Carmen Flores, Claimant**

Contested Case No: 08-165H

**FINAL ORDER**

April 3, 2009

CARMEN FLORES, Petitioner

SAIF CORPORATION, Respondent

Before John Shilts, Workers' Compensation Division Administrator

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The issue is whether claimant is eligible for vocational assistance. As claimant is not authorized to work in the United States, I affirm the orders of the Rehabilitation Review Unit (RRU) and Administrative Law Judge (ALJ) Emerson G. Fisher finding that claimant is not eligible for vocational assistance.<sup>1</sup>

**FACTUAL SUMMARY**

I adopt the facts as found by the RRU and ALJ Fisher. Claimant was compensably injured. Insurer denied her request for vocational assistance on the grounds she was able to return to her regular work and because she is not authorized to work in the United States. Claimant has acknowledged that she is not authorized to work in this country.

Claimant requested administrative review. On March 21, 2008, the RRU also found claimant ineligible for vocational assistance based on her immigration status. Claimant requested a hearing.

ALJ Emerson G. Fisher issued his Proposed and Final Order on February 20, 2009. ALJ Fisher affirmed RRU's order on the grounds this department has previously issued a decision upholding the validity of the agency's rule which provides that workers who are not authorized to work in the United States are not eligible for vocational assistance.

**CONCLUSIONS OF LAW**

As this is a vocational assistance dispute I may modify the administrative order only if it violates a statute or rule, exceeds the director's statutory authority, was based on an unlawful procedure, or manifests an abuse of discretion. OAR 436-001-0225(3).<sup>2</sup>

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<sup>1</sup> Claimant's attorney filed a document with the department dated February 25, 2009, titled "Response to Exceptions," which is apparently directed to ALJ Fisher's February 20, 2009 order. Counsel argues claimant should be eligible for vocational assistance. However, at the conclusion of the document, counsel asks that I adopt ALJ Fisher's order. The underlying Rehabilitation Review Unit order found claimant ineligible for vocational assistance. ALJ Fisher rejected claimant's arguments against this position and his order affirms the RRU order. Insurer did not file exceptions to the order which found in its favor. I therefore take claimant's attorney's document to state exceptions, and to argue that I should reverse ALJ Fisher's order.

<sup>2</sup> OAR 436-001-0225(3) provides in part:

OAR 436-120-0320(11)(a) provides that a worker must be authorized to work in the United States in order to be eligible for vocational assistance.<sup>3</sup> Claimant argues this rule exceeds the statutory authority of the department and the enabling statute, ORS 656.340, by establishing eligibility criteria which the legislature did not place in the statute. Claimant also asserts this rule conflicts with the statutory definition of a “worker” found in ORS 656.005(30). I have previously addressed and rejected these arguments. *Carmen Carreon*, 12 CCHR 334 (2007). I therefore affirm the RRU order and ALJ Fisher’s order.

**IT IS HEREBY ORDERED:**

The March 21, 2008 Director’s Review and Order and ALJ Fisher’s February 20, 2009 Proposed and Final Order are affirmed.

DATED this 3<sup>rd</sup> day of April, 2009.

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“In vocational assistance disputes under ORS 656.340 . . . the administrative law judge may modify the director’s order only if it:

- (a) Violates a statute or rule;
- (b) Exceeds the director’s statutory authority;
- (c) Was made upon unlawful procedure; or
- (d) Was characterized by an abuse of discretion or clearly unwarranted exercise of discretion.”

<sup>3</sup> At the time the director’s order was issued in this case, the relevant rule was numbered 436-120-0320(10)(a). Admin. Order No. 07-067, eff. December 1, 2007. The language of the renumbered rule is identical to the previous rule. OAR 436-120-0320(11) states in part:

“A worker entitled to an eligibility evaluation is eligible for vocational services if all the following additional conditions are met:

- (a) The worker is authorized to work in the United States.”