
In the ORS 656.327 Medical Treatment Dispute of

Janice M. Boggs, Claimant

Contested Case No: 10-080H

PROPOSED & FINAL ORDER

December 9, 2010

JANICE M. BOGGS, Petitioner

LIBERTY NORTHWEST INSURANCE CORPORATION, Respondent

Before Chuck Mundorff, Administrative Law Judge

A hearing convened on November 9, 2010 in Eugene, Oregon before Administrative Law Judge Chuck Mundorff. The claimant who was not present, but was represented at hearing by her attorney Christine Jensen. The employer, Lane County School District 4J, and its insurer, Liberty Northwest Insurance Corp. are represented by attorney David O. Wilson. The record closed on November 9, 2010 following recorded closing arguments.

EXHIBITS

At hearing exhibits 1-15 were admitted into the record without objection.

ISSUES

Claimant requested a hearing seeking enforcement of the right to medical services pursuant to a January 8, 2010 Administrative Order from the Workers' Compensation Division. WCB No. 10-02243. Additionally, claimant requested a hearing contesting a May 12, 2010 Administrative Order of Dismissal of a medical treatment dispute. WCB No. 10-00080H. Claimant also seeks penalties and a penalty related attorney fee alleging that Liberty Northwest unreasonably resisted payment of compensation.

FINDINGS OF FACT

Claimant sustained a compensable injury on September 11, 2000. The claim was accepted for lumbosacral strain and L4-5 internal disc disruption. (Ex. 2). Claimant had numerous providers and multiple procedures over the years. She was referred to Dr. Kosek in 2009 who recommended a spinal morphine pump. Liberty Northwest denied the procedure as "excessive, inappropriate and ineffectual." Ex. 2-2).

Claimant appealed that denial and an Administrative Order issued on January 10, 2010 that held Liberty Northwest liable for the disputed treatment. On May 14, 2010 Liberty Northwest scheduled an examination with Dr. Lawlor in regards to the proposed treatment. (Exs. 4, 5). Claimant requested enforcement of the January Administrative Order from the Medical Resolution Team and requested a penalty for unreasonable resistance to payment of compensation from the department. (Ex. 6).

A second Administrative Order issued on May 12, 2010 which dismissed the proceeding as moot, since the underlying issue of the propriety of the spinal implant procedure had been determined by the January Order. As that Order was final without appeal, the matter was finally

determined obviating the need for resolution. (13). Claimant requested a hearing from the May 7, Administrative Order. (Ex. 14). That request for hearing was transferred to the Workers' Compensation Board's Hearings Division by Referral Order dated May 19, 2010.

Claimant underwent the contested procedure in April of 2010. (Ex. 15). In addition to the requested contested case hearing at the Workers' Compensation Division, claimant independently requested a hearing with the Workers' Compensation Board to enforce the January 10, 2010 Administrative Order and requested a penalty.

CONCLUSIONS AND REASONING

At hearing the parties acknowledged that the services sought by claimant had been provided and were paid for by Liberty Northwest. The sole remaining issue was whether a penalty and penalty related attorney fee were appropriate in light of the January Order and the delay in claimant obtaining compensable medical services.

ORS 656.262(11) provides the director with exclusive jurisdiction over proceedings regarding solely the assessment and payment of penalties when an insurer or self-insured employer unreasonably delays or refuses to pay compensation. However, when another issue such as entitlement is raised by either party, then the assessment and payment of a penalty is no longer the sole issue between the parties. Here, the concurrent issue of entitlement to services was moot and the parties agree that the sole remaining issue was the propriety of penalties and fees.

ORS 656.704 (5) provides: "If a request for hearing or administrative review is filed with either the director or the board and it is determined that the request should have been filed with the other, the dispute shall be transferred." In this instance, original jurisdiction of the penalty issue lies with the Director. As such, it is appropriate to transfer this dispute to the Sanctions Unit to determine if a penalty and/or penalty related attorney fee is appropriate.

ORDERS

IT IS HEREBY ORDERED that the Administrative Order of Dismissal dated May 12, 2010 is affirmed. **It is further ordered** that the penalty issue is transferred to the Sanctions Unit for determination.