

In the ORS 656.327 Medical Treatment Dispute of

**Eric Corum, Claimant**

Contested Case No: 09-142H

**PROPOSED & FINAL ORDER**

February 10, 2010

SAIF, Petitioner

CORUM, Respondent

Before Emerson G. Fisher, Administrative Law Judge

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SAIF appeals the Director's Administrative Order issued on August 28, 2009 by the Medical Section Resolution Team (MT) of the Workers Compensation Division (WCD), Department of Consumer and Business Services (director or department).

In lieu of proceeding to hearing on November 19, 2009, the parties submitted the matter to the undersigned Administrative Law Judge (ALJ) for resolution based on the documentary evidence and written argument. Claimant was represented by attorney Phil Garrow. J. C. Reid & Company, and its insurer, the SAIF Corporation, were represented by attorney James Booth.

The record closed on January 14, 2010, upon receipt of SAIF's "reply argument."

The documentary evidence received consisted of Exhibits 1 through 25.<sup>1</sup>

**ISSUE AS DETERMINED BY MT**

Whether office visits and diagnostic services performed by Dr. Hill on August 4, 2008 and June 9, 2009; by Dr. Verheyden on August 4, 2008, September 23, 2008, November 4, 2008, November 12, 2008, November 13, 2008, and December 5, 2008; and by Dr. Wagner on December 1, 2008, were appropriate medical services for claimant.

**FINDINGS OF FACT**

The pertinent facts, as determined by MT are:

1. Claimant reported a work-related injury on July 11, 2008, when his hands were exposed to a mixture of gas, oil, and engine cleaning solvent;
2. Claimant sought care at an urgent care clinic, where he was evaluated by Dr. Wendel and treated with a steroid cream applied to the affected area;
3. SAIF denied the claim on July 31, 2008;
4. On August 4, 2008, claimant sought care from Dr. Verheyden for continued hand aching and discomfort. Among other things, claimant reported decreased hand

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<sup>1</sup> Claimant's objection to proposed Exhibits 8A through 8C, 26, and 27 was sustained on the ground that the proposed exhibits were not part of the evidentiary record presented to MT.

coordination and strength, pain radiating up into the arm (especially on the right side), and throbbing pain associated with a pins and needles sensation. Claimant also reported that use of the steroid cream had not provided any significant relief. Dr. Verheyden recommended x-rays of both hands and EMG nerve conduction studies. The rays were normal. Nerve conduction studies (performed by Dr. Hill) demonstrated mild left carpal tunnel syndrome. Dr. Verheyden recommended a short-course of anti-inflammatory medication;

5. Claimant returned to Dr. Verheyden on September 23, 2008 reporting low grade burning discomfort and weakness in the hands, and well as recent headaches and irritability due to pain. Dr. Verheyden performed a complete examination of the upper extremities. Dr. Verheyden assessed chronic persistent aching pain and discomfort, noting he had no good answer for the solvent exposure;
6. In follow up with Dr. Verheyden on November 13, 2008, claimant reported continued pain and fatigue in both hands that was difficult to live with. Claimant further reported that he was unable to use the steroid cream or take anti-inflammatories. Dr. Verheyden performed another complete examination of the upper extremities, which he concluded was unremarkable. Dr. Verheyden administered injections into the carpal tunnel areas bilaterally for further diagnostic evaluation. Dr. Verheyden recommended a physiatry consult for evaluation of chronic pain;
7. Dr. Wagner examined claimant on December 1, 2008 at the request of Dr. Verheyden. After reviewing various diagnostic studies, Dr. Wagner diagnosed, in part, bilateral hand pain status post solvent exposure. Dr. Wagner recommended changing medications;
8. Claimant returned to Dr. Verheyden on December 5, 2008 after dropping a 20-pound weight on his toe. Claimant reported no improvement in his hand pain following the carpal tunnel injection or the trial of medications from Dr. Wagner. X-rays of the left great toe demonstrated a stable undisplaced fracture. Dr. Verheyden recommended continued conservative care;
9. On March 20, 2009, a Workers' Compensation Board Opinion and Order, which has become final, set aside SAIF's claim denial.
10. During a January 13, 2009 deposition, Dr. Wendel opined that it was unusual for contact dermatitis to have such symptoms.
11. SAIF accepted contact dermatitis to the distal right hand and distal left hand on April 12, 2009.
12. In May 2009, SAIF issued an Explanation of Benefits (EOB) denying all treatment provided on August 4, 2008, September 23, 2008, November 4, 2008, November

12, 2008, November 13, 2008, December 1, 2008, and December 5 2008 as being unrelated to a compensable condition.

13. Claimant requested director's review.

Reasoning that all the disputed medical services were appropriate diagnostic medical services, MT concluded that SAIF was liable for the disputed services, except for the toe x-rays.

SAIF requested a hearing.

### CONCLUSIONS OF LAW AND OPINION

MT's Order of August 28, 2009 may be modified only if it is not supported by substantial evidence in the record or if it reflects an error of law. OAR 436-0001-0225(2). Insofar as review of factual findings is concerned, if a finding by the MT is reasonable, keeping in mind the evidence against the finding as well as the evidence supporting it, the finding is supported by substantial evidence. See *Liberty Northwest Insurance Corporation v. Kraft*, 205 Or App 59, 62 (2006); *Armstrong v. Asten-Hill Co.*, 90 Or App 200, 206 (1988).

If issues were raised during MT's review proceeding, but not addressed in MT's order, remand is appropriate. See *Howard D. Smith*, 13 CCHR 15 (2008).

SAIF asserts that it raised (among other things) the causal relationship of the disputed medical services to the accepted contact dermatitis as an issue in the MT review proceeding. Contending that jurisdiction of that issue lies with the Board's Hearing Division, and reasoning that the causal relationship issue should be finally determined before MT resolves the appropriateness of the disputed services, SAIF's seeks remand to MT for the issuance of a Defer and Transfer Order.

Claimant responds that the causal relationship issue was first raised in this proceeding, and thus reasons that the issue cannot be addressed here. Accordingly, claimant argues that MT's order should be affirmed.

In May 2009, SAIF issued an EOB denying payment for all the disputed treatment on the ground that the treatment was unrelated to a compensable condition. Subsequently, in its response to claimant's request for Director review, SAIF completed a Specification of Disputed Medical Issues form, in which it indicated that the disputed medical services were disapproved because the services were "excessive, inappropriate, ineffectual." On the same form, SAIF could have, but did not, specify that the services were also in dispute because they were not causally related to the accepted condition. In another form, dated the same day as the specification of issues form, SAIF identified the reason for nonpayment was "all service not related to accepted."

Thus, while the May 2009 EOB established that SAIF initially denied payment because the disputed medical services were not causally related to the accepted condition, it is not clear from the remainder of the record, that the causal relationship issue was still viable at the time of

the MT proceeding. Because of my limited review in this matter, I am unable, in the first instance, to make that determination. Consequently, remand is appropriate.

**ORDER**

The Administrative Order dated August 28, 2009 is vacated, and the matter remanded to MT to consider the appropriateness of a Defer and Transfer Order.