

In the Medical Services of  
**Kristi R. Young, Claimant**  
Contested Case No: 09-136H

**PROPOSED & FINAL ORDER**

January 11, 2010

KRISTI R. YOUNG, Petitioner  
SENTRY INSURANCE A MUTUAL COMPANY, Respondent  
Before Darren L. Otto, Administrative Law Judge

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A hearing was scheduled to be heard in the above entitled matter on December 2, 2009 in Pendleton, Oregon before Administrative Law Judge Darren L. Otto of the Workers' Compensation Board. The parties, however, asked that the matter be decided based on the written record and that request was granted. Claimant is represented by her attorney, R. Adian Martin. The employer, Evangelical Lutheran Good Samaritan, and its processing agent, Intermountain Claims Inc., are represented by their attorney, Howard R. Nielsen. On December 17, 2009, claimant filed her initial written closing argument. On December 30, 2008, the employer filed its written response. The hearing concluded on January 6, 2010 without a reply from claimant. Exhibits 1 through 40 are received into evidence.

**ISSUES**

Claimant appeals an August 2, 2009 Administrative Order of Dismissal which affirmed an August 5, 2009 Administrative Order finding the employer and its processing agent not liable for various medical services. The issue is whether the Director's Order was not supported by substantial evidence in the record or reflected an error of law.

**FINDINGS OF FACT**

On June 15, 2005, claimant sustained a compensable low back injury while working for the employer (Ex. 37-1). On August 8, 2005, the employer accepted claimant's lumbar strain as a disabling industrial injury (Ex. 1). On December 1, 2005, the employer denied compensability of claimant's lumbar radiculopathy (Ex. 2). On January 5, 2006, the employer amended its Notice of Acceptance to include claimant's lumbar strain combined with preexisting non compensable degenerative changes and preexisting conditions (Ex. 3). Finally, on January 6, 2006, the employer denied compensability of claimant's current combined low back condition (Ex. 4). Claimant requested a hearing challenging those two denials, but they were eventually approved by an Administrative Law Judge, the Workers' Compensation Board, and ultimately the Court of Appeals (Exs. 6, 7, 10). Also, on December 3, 2008, the employer denied compensability of claimant's lumbar spine root nerve impingement and that denial was not appealed (Ex. 16).

Claimant sought medical services for low back symptoms from Dr. McClesky on October 9, 2007, October 23, 2007, and December 10, 2007 (Exs. 31-3, 34-4, 37-1). On October 27, 2008, she sought medical treatment for low back symptoms at St. Clair Hospital. *Id.* Also, on October 29, 2008 and November 10, 2008, claimant underwent MRI and CT scans of her lumbar spine at the Center for Diagnostic Imaging. *Id.* Claimant asked the employer to pay for all of

those medical services and the employer refused, claiming that they were directed toward claimant's non compensable low back conditions. *Id.*

On August 5, 2009, an Administrative Order found the employer and its processing agent not liable for any of the disputed medical services because claimant sought treatment for conditions which were not related to the accepted compensable injury or illness (Ex. 37-3). Claimant requested a hearing from the WCD regarding that Order and, on August 21, 2009, the Director issued an Administrative Order of Dismissal, concluding that the Director had previously addressed the medical dispute and no further action was required (Ex. 40).

### **FINDINGS OF ULTIMATE FACT**

All of the disputed medical services were directed toward claimant's non compensable low back conditions.

### **CONCLUSIONS OF LAW AND OPINIONS**

Claimant contends that the August 21, 2009 Administrative Order of Dismissal should be reversed because she need only establish that the industrial injury was a fact of consequence and the need for medical treatment rendered. The employer asserts that the specific issues raised by claimant were litigated in a prior proceeding with the identical parties and same medical services bills. Thus, the employer asserts that claimant is precluded from relitigating a final decision in a subsequent claim. Also, the employer asserts that claimant failed to establish that the Director's Order was not supported by substantial evidence in the record or reflected in error of law.

In medical service and medical treatment disputes under ORS 656.245, ORS 656.247(3)a) and 656.327, the Administrative Law Judge may modify the Director's Order only if it is not supported by substantial evidence in the record or if it reflects an error of law. New medical evidence or issues may not be admitted or considered. OAR 436-001-0225(2).

On August 5, 2009, the medical reviewer for the Workers' Compensation Division found the employer's processing agent not liable for any of the disputed medical services, reasoning,

After review of the chart notes and imaging studies for the dates of service in dispute, RT concludes that treatment received from Dr. McClesky, Center for Diagnostic Imaging, and St. Clare Hospital, was for pre-existing, noncompensable degenerative disc disease/arthritis, conditions that were denied and upheld through the court system. RT concludes that with the Court of Appeals order becoming final 30 days after issue, all denials are now final by operation of law.

OAR 436-009-0015 provides that an injured worker is not liable to pay for any medical service related to an accepted compensable injury or illness, with certain exceptions. One of those exceptions is when the injured worker seeks treatment for conditions not related to the accepted compensable injury or illness, as in this case. RT concludes that [claimant] may be responsible for the disputed dates of services. (Ex. 37-3).

The Director correctly approved the medical reviewer's rationale in finding the employer's processing agent not liable for the disputed medical services. The employer previously denied claimant's lumbar radiculopathy, current combined low back condition, and lumbar spine root nerve impingement. Ultimately, all three of those denials were approved through litigation and became final by operation of law. All of claimant's medical service bills were directed toward treatment for her low back symptoms related to those non compensable preexisting degenerative conditions. The Director's Order, finding claimant's medical services were related to preexisting non compensable conditions, was supported by substantial evidence in the record. Also, the Director's decision that these medical service disputes had been previously litigated to a final determination against claimant's interest did not reflect an error of law. Therefore, the Director's Order will not be modified.

### **ORDER**

IT IS HEREBY ORDERED that the August 21, 2009 Administrative Order of Dismissal is approved in its entirety.