
In the ORS 656.327 Medical Treatment Dispute of

William A. Drey, Claimant

Contested Case No: 10-167H

PROPOSED & FINAL ORDER

March 3, 2011

WILLIAM A. DREY, Petitioner

LIBERTY NORTHWEST INSURANCE CORPORATION, Respondent

Before Martha J. Brown, Administrative Law Judge

Pursuant to notice, a hearing was scheduled to be held on January 7, 2011 in Salem, Oregon before Administrative Law Judge Martha J. Brown. Prior to hearing, the parties requested that the matter be decided on the written record. Claimant is represented by his attorney, Ronald Fontana. The employer, Fought & Company, and its insurer, Liberty Northwest Insurance Corp., are represented by their attorney, Barbara Woodford. Upon receipt of the parties' written closing arguments, the record closed on February 1, 2011.

Exhibits 1 through 90 have been admitted into the record.

ISSUES

1. Compensability of medical services. Claimant has appealed the October 1, 2010 Administrative Order that found that facet injections, nerve blocks and discography were not appropriate medical services for claimant. (Ex. 89).
2. Attorney fees and costs.

FINDINGS OF FACT

I hereby adopt and incorporate by reference the Findings of Fact set forth in the October 1, 2010 Administrative Order.

CONCLUSIONS OF LAW AND OPINION

Claimant contends that the Administrative Order in this matter is based on an error of law, and that he is entitled to diagnostic medical services. The insurer argues, however, that the services sought by claimant are not causally related to the accepted condition. The insurer further contends that such medical services are inappropriate or ineffectual and, finally, that the services are for a new/omitted condition for which the worker has not yet asked to be accepted.

Pursuant to ORS 656.327(1)(a), administrative review may be requested of treatment that is denied on the ground that it is inappropriate or ineffectual. ORS 656.372(2) provides that if a party is dissatisfied with the director's order, the dissatisfied party may request review under ORS 656.704. The administrative order may be modified only if it is not supported by substantial evidence in the record or if it reflects an error of law.

Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding. ORS 183.482(8)(c). Under substantial evidence review, the reviewing tribunal looks at the whole record with respect to the issue being decided, rather than at one piece of evidence in isolation. If an agency's finding is reasonable, keeping in mind the evidence against the finding as well as the evidence supporting it, there is substantial evidence. *Liberty Northwest Insurance Co. v. Kraft*, 205 Or App 59 (2006); *Armstrong v. Asten-Hill Co.*, 90 Or App 200, 206 (1988).

Here, the director's order found that facet injections were not proposed by claimant's treating doctor, Dr. Long, in order to determine the causal relationship between the accepted condition and claimant's condition. Rather, the order concluded that Dr. Long had stated only that such injections were to determine the extent of the compensable injury as opposed to whether claimant's symptoms were related to the injury. Additionally, the order found that numerous doctors (Drs. Carr, Dodge, Rosenbaum and Lewis) had all opined that facet injections were unnecessary for a lumbar strain and were not a reliable method to diagnose whether facet joints were claimant's pain generators. Finally, the order found that claimant's current condition had been denied by the insurer and was not an accepted condition.

Claimant argues that the Medical Reviewer erred in the application of the law and further argues that there is no substantial evidence to support the conclusion. Specifically, claimant argues that he cannot request acceptance of a condition that has not yet been diagnosed. However, claimant acknowledges that the Board has previously concluded, in *Camron Horner*, 62 Van Natta 2094 (2010), that medical services are limited to formally accepted conditions. Nevertheless, claimant contends that Horner was a "tragically erroneous decision currently on appeal to the Court of Appeals."

Claimant next contends that it is the law of the case that the medical services at issue were aimed at diagnosing the extent of the compensable injury. Claimant argues that a prior ALJ found that the proposed medical services were both compensably related to the work injury and necessary to determine the extent of the compensable injury. In light of the fact that the prior ALJ's Opinion and Order was not appealed, claimant contends that it is now the law of the case and the Director erred by making findings or conclusions to the contrary.¹

I agree with the insurer, however, that the issue in the prior case was limited to whether there was a causal relationship between the proposed procedures and the work injury. Here, the issue is whether the contested medical services are appropriate or effectual, and the administrative order found that they were not, based on the reasoning provided by numerous doctors. After reviewing the order, I find that the director's order is supported by substantial evidence in the record. Additionally, I am unable to find that the order reflects an order of law. Therefore, I conclude that the order must be upheld.

¹ Claimant also contends that the reviewer erred by only discussing the facet joint blocks and by failing to discuss the nerve root blocks or provocative discography. However, the reviewer relied on the opinion of Dr. Lewis and noted, in the order's findings, that Dr. Lewis did not agree that the nerve root blocks or provocative discography were appropriate. Consequently, the reviewer concluded that all three medical services: facet joint injections, nerve block injections, and provocative discography, were not appropriate for claimant.

ORDER

IT IS HEREBY ORDERED that the October 1, 2010 Administrative Order is upheld.