

In the Medical Services Dispute of
Kevin D. Patterson, Claimant
Contested Case No: 10-188H
PROPOSED & FINAL ORDER OF DISMISSAL

July 1, 2011

KEVIN D. PATTERSON, Petitioner
PORTLAND COMMUNITY COLLEGE, Respondent
Before Jill M. Riechers, Administrative Law Judge

It has come to my attention that this order, originally issued on June 30, 2011, was incorrectly titled. Accordingly, it is being re-issued. The order is hereby republished as a Proposed and Final Order of Dismissal. Appeal rights shall begin to run from the date of this Proposed and Final Order of Dismissal, and not from June 30, 2011.

On or about December 14, 2010, claimant, who was then unrepresented, filed a request for hearing with the Workers' Compensation Division ("WCD"), entitled, "In the Matter of ORS 656.245 Medical Service Dispute." (Ex 11; Agency file).¹ On December 23, 2010, WCD referred the request for hearing to the Workers' Compensation Board, and the request was assigned WCB Case No. 10-00188H. (Ex 12; Agency file).

Claimant is now represented by Glen Lasken. On June 14, 2011, claimant filed a supplemental request for hearing with respect to the WCD's Administrative Order of Dismissal, DMS 10-1163, dated November 30, 2010, which was assigned WCB Case No. 11-02925, and consolidated with WCB Case No. 10-00188H.

The employer, Portland Community College, and its insurer processing agent, Pinnacle Risk Management Services, are represented by Matthew F. Denley. On June 9, 2011, employer/Pinnacle submitted a Motion to Dismiss claimant's request for hearing. On June 28, 2011, claimant submitted a Response.²

The Motion, Response, exhibits and documents contained in the agency files have been reviewed and considered.

FACTS

Claimant's March 2, 2009 injury was accepted as a non-disabling right elbow strain of the biceps tendon with partial tear. (Ex 1). On May 14, 2010, claimant sought treatment with Nancy Maloney, M.D., and reported that he was experiencing pain in the right elbow since March 25, 2010, after an incident involving his daughter. (Ex 2). Dr. Maloney submitted a bill for \$254.17 in connection with the May 14, 2010 visit. Claimant underwent an MRI scan of the right elbow on May 28, 2010. A bill of \$2,578.90 was submitted for that scan. (Ex 3).

¹ All references to Exhibits in this Order are to exhibits appended to employer/insurer's June 9, 2011 Motion to Dismiss.

² WCB 11-02925 is being addressed in a separate Order.

When the billings for the May 14 and May 28 medical services were not paid, WCD asked the former processing agent for employer, Public Risk Consultants (“PRC”), to provide information. (Ex 4). PRC responded that it was not paying these medical service billings on the grounds that they were not related to the accepted workers’ compensation claim. (Ex 5). Because PRC was disputing the causal relationship between the medical services and the accepted claim, on September 8, 2010, by Defer and Transfer Order MS 10-0859, WCD referred the compensability issue to the Workers’ Compensation Board (“WCB”). (Ex 6).

On September 15, 2010, WCB assigned WCB Case No. 10-04926 to the matter, and scheduled the case for hearing before Administrative Law Judge Fulsher on November 17, 2010. (Ex 7). On November 1, 2010, claimant’s former attorney withdrew the request for hearing in WCB Case No. 10-04926, and asked ALJ Fulsher to issue a dismissal order. (Ex 8). ALJ Fulsher dismissed WCB Case No. 10-04926 by Order of Dismissal dated November 9, 2010. (Ex 9). The Order of Dismissal provided a 30-day period in which the parties could request WCB review, if any party was dissatisfied with the Order.

Afterward, on November 30, 2010, WCD issued an Administrative Order of Dismissal, DMS 10-1163, advising that it had received the November 9, 2010 Order of Dismissal, and noting that that order resolved the issues between the parties. (Ex 10). The WCD accordingly found the request for administrative review regarding the May 14 and May 28, 2010 medical services to be moot, and dismissed the matter. On or about December 14, 2010, claimant filed the request for hearing with WCD that is the subject of the current case. (Ex 11). In this request for hearing, claimant stated he would like to “appear for a hearing for my bills, medical treatment & family.” WCD subsequently referred this request for hearing to WCB. (Ex 12). On June 14, 2011, claimant filed a supplemental request for hearing with respect to WCD’s November 30, 2010 Order, DMS 10-1163.

DISCUSSION

The original dispute concerned the unpaid May 14 and May 28, 2010 medical service billings from Dr. Maloney and for the MRI scan. The WCD referred the question of causal relationship between the medical services and the accepted injury to WCB for decision. In response to request by claimant’s former counsel, ALJ Fulsher dismissed the matter by November 9, 2010 Order of Dismissal in WCB Case No. 10-04926.

Claimant’s current requests for hearing pertain to his bills and medical treatment, and to the Administrative Order of Dismissal, DMS 10-1163, that dismissed the WCD matter after the November 9, 2010 dismissal of WCB Case No. 10-04926. No other bills or medical treatment besides those involved in WCB Case No. 10-04926 are alleged to be at issue. The current causal relationship issues consequently appear to be the same as those that were previously dismissed. There is no indication that the November 9, 2010 Order of Dismissal was appealed to WCB, or that it did not become final by operation of law. As such, litigation of these issues is barred by principles of claim or issue preclusion. See *Nelson v. Emerald People’s Utility District*, 318 Or 99 (1993); *Drews v. EBI Companies*, 310 Or 134, 149 (1990) (“The statutory scheme indicates that the finality requisite for claim or issue preclusion, against the worker, occurs only when a worker *** [fails] to file a timely appeal to the Board, ORS 656.289(3) ***.”)

ORDER

IT IS THEREFORE ORDERED that claimant's December 14, 2010 request for hearing is dismissed, with prejudice. Appeal rights shall begin to run from the date shown below, not from June 30, 2011.