

In the Matter of the Vocational Dispute of

**Presnell, Raymond, Claimant**

Contested Case No: HH10-110

**FINAL ORDER**

June 12, 2002

SAIF CORPORATION, Petitioner

RAYMOND PRESNELL, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

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On December 20, 2001, Hearing Officer Paul Vincent conducted a telephone hearing. Petitioner, SAIF Corporation (insurer), appeared through attorney Michael Fetrow. Attorney Christopher D. Moore represented respondent Raymond Presnell (claimant). The Department of Consumer and Business Services, Workers' Compensation Division (WCD) appeared through Assistant Attorney General Carol A. Parks.

The respondent filed exceptions to Hearing Officer Vincent's March 5, 2002 Proposed and Final Contested Case Order, which determined claimant was eligible for vocational assistance, but failed to award an assessed attorney fee. Respondent SAIF Corporation did not respond to the exceptions. WCD waived appearance. Before the Director, the issue is entitlement to an attorney fee. The entire record, consisting of a tape recording of the hearing, all evidence received, and all documents filed, has been considered.

**Findings of Fact**

I adopt Hearing Officer Vincent's Findings of Fact.

**Conclusions of Law and Opinion**

The hearing officer ordered the insurer to determine claimant's eligibility for vocational assistance, pursuant to OAR 436-120-0003(3), because the claim had been reopened to process a newly accepted medical condition. Accordingly, the hearing officer affirmed the September 13, 2001 administrative order issued by the Rehabilitation Review Unit (RRU) of the WCD.

Because claimant prevailed at a contested case hearing, his attorney is entitled to a reasonable fee. ORS 656.385(1),(3). The factors to consider in awarding a fee are: time devoted to the case, complexity of the issue(s), quality of legal representation, value of the interest involved, nature of the proceedings, benefit secured for the claimant, risk that an attorney's efforts may go uncompensated, assertion of frivolous issues or defenses, a statement of services, and any other relevant consideration deemed appropriate. OAR 436-001-0265.

Claimant's counsel submitted a statement of services indicating approximately 7.5 hours expended subsequent to the insurer's request for hearing, and requesting a \$3,500 attorney fee.

The issue of claimant's entitlement to vocational assistance based on a newly accepted

condition was legally complex in that the insurer sought to invalidate the rule upon which RRU found claimant eligible for vocational assistance. Claimant's counsel is a highly experienced workers' compensation attorney. Securing vocational assistance is a valuable interest and a significant benefit to claimant; he is currently eligible to receive \$25,000 in direct worker purchases. Because the insurer had denied claimant's request for vocational assistance, there was a risk that claimant's counsel efforts may have gone uncompensated. This factor, however, is less significant considering that claimant had prevailed before RRU. The insurer did not object to claimant's counsel's statement of services. Accordingly, based on the factors of OAR 436-001-0265, claimant's counsel is awarded \$3,500 as a reasonable, assessed attorney fee.

IT IS HEREBY ORDERED that the March 5, 2002 Proposed and Final Contested Case Order is supplemented to award a \$3,500 assessed attorney fee, payable by the insurer. The remainder of the order is affirmed.

DATED this \_\_\_\_\_ day of June, 2002.

**MARY NEIDIG, DIRECTOR**  
**DEPARTMENT OF CONSUMER**  
**AND BUSINESS SERVICES**

By: \_\_\_\_\_  
John Shilts, Administrator  
Workers' Compensation Division