
In the ORS 656.340 Vocational Assistance Dispute of

LONNIE ANDERSON, Claimant

Contested Case No: H04-189

PROPOSED AN FINAL ORDER

MARCH 31, 2005

LONNIE ANDERSON, Petitioner

SAIF CORPORATION, Respondent

Before Allison Greene Webster, Administrative Law Judge, Administrative Hearings

HISTORY OF THE CASE

Claimant appeals a Director's Review and Order issued on December 1, 2004 by the Rehabilitation Review Unit (RRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (department or director). On January 11, 2005, the department referred the matter to the Office of Administrative Hearings (OAH). On March 18, 2005, Administrative Law Judge Alison Greene Webster conducted a telephone hearing in Beaverton, Oregon. Attorney Jim Kirkpatrick, for attorney of record James Dodge, represented Lonnie S. Anderson (claimant). Attorney Jim Booth represented SAIF Corporation (insurer). No witnesses testified, and the record closed on the date of hearing.

ISSUE

Whether claimant is entitled to an attorney fee in excess of the \$1,000 awarded by RRU.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 43 and an attorney time log, marked as Exhibit 44 were admitted into the record without objection.

FINDINGS OF FACT

I adopt and incorporate the findings of fact contained in the Administrative Order dated December 1, 2004 with the following summary and supplementation:

(1) Claimant injured his left shoulder on December 16, 2002 while employed as a pressure washer. SAIF accepted a left shoulder strain and disabling left shoulder anterior labral tear. (Exs. 1, 3, 7.)

(2) On April 26, 2004, SAIF issued a Notice of Closure, awarding claimant 7 percent unscheduled permanent partial disability (PPD) for the left shoulder. (Ex. 16.) Claimant requested reconsideration.

(3) On May 11, 2004, SAIF determined that claimant was ineligible for vocational assistance because he could return to regular work. (Ex. 20.) Claimant requested review by the

director.

(4) A July 24, 2004 Order on Reconsideration increased claimant's unscheduled PPD award to 15 percent, and affirmed the medically stationary date of March 25, 2004. (Ex. 25.)

(5) SAIF scheduled claimant for a Work Capacity evaluation on October 18, 2004 to determine whether he could perform his regular duties, as described in the revised job analysis for a pressure washer with claimant's employer. (Exs. 29, 30, 31, 33, 34.) Claimant arrived late for the evaluation and in an agitated state. He expressed anger towards SAIF. The evaluators determined that claimant "was not in any frame of mind to complete a work capacity evaluation" and asked him to leave. (Ex. 35.)

(6) In a Director's Review and Order issued December 1, 2004, the director determined that claimant cannot return to regular or other suitable employment. The director set aside SAIF's Notice of Ineligibility for Vocational Assistance, and ordered SAIF to perform a substantial handicap evaluation on claimant. The director also awarded an attorney fee of \$1,000 to claimant's attorney after considering the factors set forth in OAR 436-120-0008. (Ex. 40.)

CONCLUSION OF LAW

RRU appropriately awarded an attorney fee of \$1,000.

OPINION

Claimant seeks an increase in the \$1,000 attorney fee awarded by RRU. Specifically, claimant asserts that his attorney was not adequately compensated for his time, because he spent 13.7 hours on the case at a fee of \$200 per hour. SAIF, on the other hand, contends that the fee awarded was appropriate and proportionate to the benefit to claimant.

OAR 436-120-0008 addresses administrative review of vocational assistance matters. Subparagraph (2) provides for the award of an attorney fee in any dispute in which the represented worker prevails in a proceeding before the director. It further provides, in pertinent part, as follows:

The attorney fee will be proportionate to the benefit to the injured worker. Primary consideration shall be given to the results achieved and the time devoted to the case. Absent extraordinary circumstances or agreement by the parties, the fee may not exceed \$2000, nor fall outside the ranges for fees as provided in the following matrix:

Estimated Benefit Achieved -- Professional Hours Devoted

1-2 hours -- 2.1-4 hours -- 4.1-6 hours -- 6.1-8 hours -- 8.1-12 hours

\$1-\$2000 -- \$100-400 -- \$200-700 -- \$300-750 -- \$600-1000 --
\$800-1250

\$2001-\$4000 -- \$200-500 -- \$400-800 -- \$600-900 -- \$800-1300 --
\$1050-1500

\$4001-\$6000 -- \$300-700 -- \$600-1000 -- \$800-1250 -- \$1000-
1450 -- \$1300-1750

\$6001-\$10000 -- \$400-900 -- \$800-1300 -- \$1050-1600 --
\$1350-1800 -- \$1550-2000

Although claimant's counsel devoted 13.7 hours to this matter, the time devoted is only one of the factors to be considered. The result achieved is also significant. Here, as noted in the director's order, claimant gained the benefit of a substantial handicap evaluation, which is valued at \$728 under OAR 436-120-0720(3). Considering the time devoted to the case, the results achieved and the absence of any extraordinary circumstances justifying an increased attorney fee award, the \$1,000 attorney fee award is reasonable and appropriate.

I therefore affirm the director's Order.

ATTORNEY FEES

Claimant has not prevailed in a contested case hearing, and therefore, is entitled to no attorney fee. ORS 656.385(1).

ORDER

IT IS HEREBY ORDERED that:

The Administrative Order dated December 1, 2004 is affirmed.