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In the ORS 656.245 Medical Service Dispute of

**James C. Crook, Sr., Claimant**

Contested Case No: 06-119H

**AMENDED ORDER REMANDING<sup>1</sup>**

March 20, 2007

JAMES C. CROOK, SR., Petitioner

EMPLOYERS INS. OF WAUSAU, Respondent

Before Jenny Ogawa, Administrative Law Judger

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Claimant appealed the Director's Review and Order issued on July 14, 2006 by the Medical Review Unit (MRU) of the Workers Compensation Division (WCD), Department of Consumer and Business Services (Director). Pursuant to notice, a hearing was scheduled for January 12, 2007, in Eugene, Oregon, before Administrative Law Judge Ogawa. Claimant appeared *pro se*. The employer, Luap Associates, and its insurer, Wausau, are represented by Darren Lee. The WCD waived appearance. In lieu of the hearing, the parties submitted this matter on the documentary record. The record closed on February 5, 2007, following receipt of claimant's reply argument.

WCD provided Exhibits 1 through 33. Wausau submitted Exhibits 1 through 49, and stipulated that these exhibits were part of the MRU record. On January 7, 2007, claimant submitted a number of documents. Potentially relevant are: (1) an August 3, 2006 letter from Tracy Mixdorf, DO, to MRU; (2) an August 17, 2006 IME report by Joseph Nora, MD; and (3) an October 17, 2006 letter from Joseph Nora, MD, to Wausau. Under ORS 656.327 and OAR 436-001-0225, new medical evidence or issues may not be admitted or considered at hearing. The ALJ's decision is to be "based on the information in the record generated by and before the MRU." *O'Neil v. National Union Fire*, 152 Or App 497, 501 (1998).

At issue was claimant's request for reimbursement of prescription medications.

Claimant sustained a compensable injury on March 30, 1988. The insurer accepted the claim for cervical strain with herniated disc at C4-5 on the left and compensatory low back muscle spasms. Claims for psychological or psychiatric conditions, bilateral carpal tunnel syndrome, eye and vision conditions, and sinus conditions are not compensable. Claimant moved to Iowa in 1994.

Dr. Tracy Mixdorf began treating claimant on July 9, 2002. In September 2003, claimant was evaluated at the Mayo Clinic, on referral from Dr. Mixdorf. Claimant complained of neck pain, pain across the trapezius and shoulder areas, bilateral arm numbness, low back pain, bilateral leg numbness, and sleep disturbance. (Ex. 14). Consultations included neurologic, sleep center, pain clinic, psychiatry, and ophthalmology. The final multiple diagnoses included: chronic pain syndrome, low back pain, lumbar spine DJD, chronic neck pain, chronic pharmacologic use for pain and sleep, poor sleep in the context of chronic pain, history of anxiety attack, and multiple somatic complaints. (Ex. 16).

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<sup>1</sup> This Order has been amended to include Page 2 which was inadvertently excluded from the original order dated March 6, 2007.

On November 30, 2004 Dr. Mixdorf wrote the insurer that claimant was on Propoxyphene and Ambien for his chronic pain “from apparently an injury that happened a long time ago.” Dr. Mixdorf thought claimant would need these medications indefinitely. (Ex. 18). On April 27, 2005, Dr. Mixdorf reiterated that the prescription for Propoxyphene and Ambien were for claimant’s chronic low back pain and for his chronic neck pain. (Ex. 20).

The MRU found that any medications claimant obtained on or before April 3, 2004 were untimely submitted, pursuant to OAR 436-009-0025(3). Claimant obtained Celebrex, Prednisone, Lorazepam, and Cyclobenzaprine before April 3, 2004. (Ex. 23-1).

Next, the MRU found that because Dr. Mixdorf only prescribed Propoxyphene and Ambien to treat claimant’s chronic low back pain, these medications were reimbursable. In addition, the MRU found that “Dr. Mixdorf provided no documentation to show why she prescribed the Hydrocodone.” (Ex. 31-3). The MRU, therefore, concluded that the following medications were not prescribed to treat the accepted conditions: Hydrocodone, Mirapex, Fluoxetine, Celebrex, Prednisone, Lorazepam, Cyclobenzaprine, and Cymbalta.

On August 3, 2006, Dr. Mixdorf sent a letter to the MRU outlining the reasons for claimant’s medications. Because this letter was generated after the MRU’s order, but may have been in response to its order, it was not considered by the MRU.

OAR 436-001-0170(5) provides that: “Where appropriate, the administrative law judge may remand a dispute to the director for further administrative action.” Because the new medical evidence may affect the outcome of the case, remand is appropriate. Therefore, this matter should be remanded to the MRU to determine whether it will consider the additional evidence.

**IT IS THEREFORE ORDERED** that claimant’s appeal of the MRU Order dated July 14, 2006 is remanded pursuant to OAR 436-001-0170(1) for further consideration.