
In the Compensation of
Jesus Torres, Claimant
Contested Case No: 08-147H
AMENDED PROPOSED & FINAL ORDER
April 10, 2009
JESUS TORRES, Petitioner
SAIF CORPORATION, Respondent
Before Darren L. Otto, Administrative Law Judge

A hearing was scheduled to be convened in the above entitled matter on October 28, 2008 in Portland, Oregon before Administrative Law Judge Darren L. Otto of the Workers' Compensation Board.¹ The parties, however, asked that the matter be decided based on the written record and that request was granted. Claimant is represented by his attorney, Donald M. Hooton. The employer, Jorge Salgado Perez, and his insurer, SAIF Corporation, are represented by their attorney, Julene M. Quinn. On February 11, 2009, claimant filed his initial written closing argument. On March 11, 2009, SAIF filed its response. The hearing concluded on March 24, 2009 with claimant's reply. Exhibits 1 through 26, 4A, and 20A are received into evidence.²

ISSUES

Claimant appeals the June 19, 2008 Director's Review and Order which determined that claimant was not eligible for vocational assistance because he was not authorized to work in the United States. The issue is whether OAR 436-120-0320(10)(a), which provides that one of the criteria for eligibility for vocational services is that the worker be "authorized to work in the United States," should be invalidated.

FINDINGS OF FACT

Claimant is an undocumented worker who is not authorized to work in the United States (Ex. 13). Nevertheless, on October 9, 2006, claimant was working for the employer as a construction laborer (Ex. 1). While putting up a scaffold to install a skylight, he fell from a stairway and was seriously injured. *Id.*

On March 30, 2007, SAIF accepted the following conditions as a disabling industrial injury:

¹WCB Case No. 08-04780 arose from an improperly filed request for hearing with the Workers' Compensation Board challenging the Director's Review and Order (Claimant's Closing Argument, p. 1). The issues in that case and in WCB Case No. 00147H are identical. WCB Case No. 08-04780 will therefore be dismissed in a separate Order of Dismissal and only WCB Case No. 08-00147H will go forward.

² Two exhibits lists were submitted in this case. On September 10, 2008, the Workers' Compensation Division (WCD) submitted Exhibits 1 through 11. On September 16, 2008, SAIF submitted Exhibits 1 through 26 which contained all of the WCD exhibits except Ex. 2-1 which is remarked as Ex. 4A and Ex. 9 which is remarked as Ex. 20A. The remainder of the WCD exhibits was duplicated in SAIF's subsequent exhibit list.

Open grade 2 right midshaft femur fracture, liver laceration posterior segment off the right lobe, 3 cm laceration right mid-femur, lumbar spinous process fracture at L3, right patella fracture, abrasion bridge of nose and compression fracture anterolateral distal right tibia.

(Ex. 5). On October 25, 2007, SAIF modified that acceptance to include claimant's right knee medial meniscus tear (Ex. 6).

Claimant has not returned to work since the date of the accident (Ex. 16-3). On April 30, 2008, however, SAIF found that claimant was not eligible for vocational rehabilitation services because he was not authorized to work in the United States (Exs. 13 & 15). Claimant appealed that decision (Ex. 18).

On May 8, 2008, Franklin Wong, M.D., performed a closing evaluation and found claimant's industrial injuries medically stationary with some permanent impairment (Ex. 16). He also concluded that claimant could not return to his regular job. *Id.* Claimant's attending physician, Douglas Bald, M.D., concurred with those findings and conclusions (Ex. 17).

On June 19, 2008, a Director's Review and Order affirmed SAIF's April 30, 2008 denial of claimant's vocational assistance because claimant was not authorized to work in the United States (Ex. 22). Claimant requested a hearing from that decision.

On June 23, 2008, SAIF closed claimant's industrial injury claim with a total of 25 percent loss of the whole person for impairment to his right knee and lumbosacral spine (Ex. 24).

FINDINGS OF ULTIMATE FACT

Claimant is not authorized to work in the United States.

CONCLUSIONS OF LAW AND OPINIONS

Claimant contends that the Director's determination that he is not entitled to vocational assistance should be reversed because OAR 436-120-0320(10)(a), which provides that eligibility for vocational services is contingent on a worker being "authorized to work in the United States," is invalid. SAIF asserts that the rule is valid and the Director's Review and Order should be approved.

Under OAR 436-120-0320(11), two requirements must be met in order for claimant to be eligible for vocational assistance; he must be "authorized to work in the United States," and must be available in Oregon for vocational assistance.

In Carmen Carreon, 12 CCHR 160 (2007), the Director relied on OAR 436-120-0320(11) in determining that the undocumented worker was not entitled to vocational assistance. That case is indistinguishable from the facts presented here. For the same reasons expressed by the Director in Carmen Carreon, *supra*, SAIF's April 30, 2008 denial of vocational assistance in this

case is approved.

ORDER

IT IS HEREBY ORDERED that the June 19, 2008 Director's Review and Order approving SAIF Corporation's April 30, 2008 denial of claimant's request for vocational assistance is affirmed.