
In the ORS 656.340 Vocational Assistance Dispute of

Jesus Torres, Claimant

Contested Case No: 08-147H

FINAL ORDER

June 17, 2009

JESUS TORRES, Petitioner

SAIF CORP., Respondent

Before John Shilts, Workers' Compensation Division Administrator

Claimant appeals insurer SAIF's denial of eligibility for vocational services which was based on claimant's not being authorized to work in the United States. OAR 436-120-0320(11).¹ On June 19, 2008, the Workers' Compensation Division on director's review and on April 8, 2009, Administrative Law Judge (ALJ) Darren L. Otto on contested case hearing, both affirmed this decision. I also affirm SAIF's decision.

FACTUAL SUMMARY

I adopt the facts as found by the ALJ. Claimant suffered an injury at work which SAIF accepted. A closing examination concluded claimant could not return to his original work. However, SAIF found claimant not eligible for vocational assistance because claimant is not authorized to work in the United States.

CONCLUSIONS OF LAW

I may only modify the administrative order if it violates a statute or rule, exceeds the director's authority, relies on an unlawful procedure, or demonstrates an abuse of discretion or a clearly unwarranted exercise of discretion. OAR 436-001-0225(3).

Claimant asserts the director exceeded her authority in adopting OAR 436-120-0320(11), and improperly exceeded the authority of or added requirements to the authorizing statute, ORS 656.340, and asserts that the rule may violate the equal protection provisions of the Oregon or United States Constitutions.

I have previously concluded OAR 436-120-0320(11) is a valid rule. *Carmen Carreon*, 12 CCHR 160 (2007). Claimant's arguments do not persuade me that decision was incorrect. I therefore affirm the prior orders issued in this case.

IT IS HEREBY ORDERED the June 19, 2008 Director's Review and Order and ALJ Otto's April 8, 2009 Proposed and Final Order are affirmed.

DATED this 17th day of June, 2009.

¹ OAR 436-120-0320(11) provides in part:

A worker entitled to an eligibility evaluation is eligible for vocational services if all the following additional conditions are met:

(a) The worker is authorized to work in the United States.