

In the ORS 656.260 Managed Care Dispute of

**Kory L. Brown, Claimant**

Contested Case No: 10-052H

**PROPOSED & FINAL ORDER**

July 26, 2010

KORY L. BROWN, Petitioner

SAIF CORPORATION, Respondent

Before David D. Lipton, Administrative Law Judge

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Pursuant to notice, a hearing was held and closed on July 1, 2010 in Portland, Oregon before David D. Lipton, Administrative Law Judge. Claimant was present and was represented by James Dodge. The employer, Clackamas County Fire District #1, and its insurer, SAIF Corporation, were represented by Thomas Sieg. Also present was Robin Henderson, M.D.

Exhibits 1 through 6 submitted by the Workers' Compensation Division were admitted.

**ISSUE**

Claimant, by and through counsel, requested a hearing concerning the Administrative Order of Dismissal dated March 24, 2010.

**FINDINGS OF FACT**

By cover letter dated March 12, 2010, Claimant, by and through counsel, requested review of a January 19, 2010 decision of the "Medical Committee". Copies of the Request for Review were sent to Claimant, SAIF, and Managed Health Care NW. The Workers' Compensation Division acknowledged receipt of the Request for Review by letter dated March 17, 2010. The letter requested that Claimant's counsel provide a copy of the "January 19, 2010 decision of the Medical Committee that you are disputing". The letter advised Claimant's counsel that if the information was not received by the following Monday an Administrative Order of Dismissal would be entered.

On March 24, 2010 the Workers' Compensation Division issued an Administrative Order finding that Claimant had not submitted a copy of the "January 19, 2010 decision of the Medical Committee" as requested. Holding that Claimant had not complied with Bulletin 293 as required by OAR 436-010-0008(6), the Request for Review was dismissed.

On April 5, 2010 Claimant, by and through counsel, requested a hearing to address the Administrative Order of Dismissal dated March 24, 2010.

The Administrative Order of Dismissal reflects an error of law.

**OPINION AND CONCLUSION**

Claimant requests review of the Administrative Order of Dismissal dated March 24, 2010.

Pursuant to OAR 436-001-0225(2), my scope of review is limited. No new medical evidence maybe considered and the Order may only be modified if it is not supported by substantial evidence in the record or if it reflects an error of law.

The administrative order under review relies for its authority on OAR 436-010-0008(6). That administrative rule provides that parties must submit requests for administrative review in the form and format provided in Bulletin 293. When a worker's representative submits a request without the required information, the Director may dismiss the request or hold initiation of the administrative review until the information is submitted.

Bulletin 293 provides the forms for requesting the Workers' Compensation Division resolve disputes regarding medical issues and medical fees. It directs the parties to use Form 2842. Form 2842 requires an indication of the issue and information concerning the injured worker, the employer/insurer and the medical provider. It requests copies of all documents generated for the MCO review and copies of all relevant medical information or records. It advises the requesting party that the failure to comply with these requirements may result in dismissal of the request.

Claimant's counsel did not file Form 2842 but the response from the Workers' Compensation Division was not a request that he do so but that he submit information that is not required by that form. Five days, three of them business days, were allowed for Claimant's counsel to comply with the request to submit a copy of the January 19, 2010 decision of the medical committee. Claimant's counsel was advised that if the information was not submitted within that period of time the Request for Review would be dismissed.

Neither OAR 436-010-0008(6) nor Bulletin 293 provide a time frame of three business days in which to comply with a request for additional information. Nor do they mandate dismissal when issues of compliance with the rule and the bulletin arise.

The Workers' Compensation Division could have declined review on the grounds that Claimant's counsel failed to request review using Form 2842. It did not. Instead, the Workers' Compensation Division dismissed the Request for Review because Claimant's counsel did not provide, within three business days, information which is not required by Form 2842.

I find that the administrative decision reflects an error of law.

### **ORDER**

IT IS HEREBY ORDERED that the March 24, 2010 Administrative Order of Dismissal is set aside and the matter is remanded for further proceedings consistent with this Order.