

In the Medical Fee Dispute of  
**Alton R. Granville, Claimant**

Contested Case No: 09-197H

**PROPOSED & FINAL ORDER**

August 12, 2010

ALTON R. GRANVILLE, Petitioner  
FMC CORPORATION, Respondent

Before Jill M. Riechers, Administrative Law Judge

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The hearing convened before Administrative Law Judge (ALJ) Jill M. Riechers in Portland, Oregon, on July 16, 2010. Claimant was present and represented himself at hearing. The employer, FMC Corporation, and its insurer processing agent, Broadspire, were represented by Brian M. Solodky. At hearing, Exhibits submitted by the Workers' Compensation Division (WCD) numbered 1 through 15, and Exhibits 1 through 12, 1A and 13A offered by claimant, were all admitted. Subsequent to hearing, Mr. Solodky provided claimant and the ALJ with a Master exhibit list, incorporating all of the submissions, and consisting of Exhibits 1 through 37. Exhibits 1 through 37 are hereby admitted into evidence, however, Exhibit 35 has been renumbered to Exhibit 8A, to fit in chronological sequence with the rest of the documents. All references to exhibit numbers in this order will be to exhibits as numbered in the Master exhibit list. The record closed on the day of hearing, following recorded closing arguments.

**ISSUE**

On December 3, 2009, claimant submitted a request for hearing, appealing from an Administrative Order of Dismissal, No. DMF 09-1462, dated November 19, 2009. (Agency file; Exs 22, 23). In that Order, Susan Hudson, R.N., from the WCD's Medical Section, dismissed the matter without prejudice.

**FINDINGS OF FACT**

Claimant has an accepted injury claim for injuries sustained on May 19, 1980, while he was employed by FMC Corporation. (Testimony; Ex 21). Broadspire, a Crawford Company, is responsible for processing the claim.

On September 26, 2009, claimant wrote to WCD, requesting assistance in obtaining payment for prescriptions and mileage to his medical providers' offices, and in obtaining payment for services provided by Lazette Harnish, L.M.T. (Exs 12, 15).

On October 21, 2009, WCD sent FMC Corp., c/o Broadspire Services, two Notice of Required Action on a Medical Dispute letters, with accompanying documents, to which Broadspire was required to respond by November 4, 2009. (Ex 16). Specifically, WCD asked Broadspire to identify the dates bills were received, and dates and amounts paid, for services provided by LMT Harnish between September 18, 2008 and October 2, 2009. (Ex 16-3). Broadspire was also asked to identify the dates reimbursement requests were received, the dates they were paid and the amounts paid, for mileage to Sarah Conroy, D.C., from January 16, 2008 through April 15, 2009; mileage to LMT Harnish's location, from September 18, 2008 through

October 2, 2009; and prescriptions for Voltaren dated July 16, 2009 and September 22, 2009. (Ex 16-5, -6). A confirmation report shows that these inquiries were faxed to Broadspire on October 21, 2009. (Ex 17).

On November 17, 2009, WCD's Compliance Section issued a Proposed and Final Order of Violation of Rule and Assessment of Civil Penalty, Order No. 09-184C. (Ex 21). The Compliance Section assessed a civil penalty of \$350.00 against FMC, because no response to its October 21, 2009 letters had been received as of November 12, 2009. There is no evidence that FMC or Broadspire appealed from Order No. 09-184C.<sup>1</sup>

On November 16 and 17, 2009, Ms. Lai, a Broadspire representative, responded to the October 21, 2009 letters from WCD. (Ex 18). Faxed information at the top of these documents indicates that they were faxed to WCD on November 17, 2009. With respect to the inquiry concerning LMT Harnish's billings for dates of service of September 18, 2008 through October 2, 2009, Ms. Lai wrote, "We have not received bills after 8/5/08 from Lazette Harnish, LMT. We need itemized bills on appropriate form!" (Ex 18-2).

Ms. Lai responded to WCD's inquiry about the mileage to Dr. Conroy for the period between January 16, 2008 through April 15, 2009; mileage to LMT Harnish for the period between September 18, 2008 through October 2, 2009; and for the July 16 and September 22, 2009 prescriptions for Voltaren, on November 17, 2009, and faxed this to WCD on November 17, 2009. (Ex 18-3). In this response, Ms. Lai indicated that the bill for these reimbursement requests was received on October 21, 2009, via fax. The response does not indicate that any amounts were paid. Ms. Lai wrote, "Need more than just totals" on the response.

Also on November 17, 2009, Ms. Lai wrote to LMT Harnish, stating that massage therapy through August 5, 2008 had been paid, and that she had not received the bills that LMT Harnish had requested be paid. (Ex 19). Ms. Lai also asked LMT Harnish to provide her with a complete itemized billing for services rendered since August 5, 2008, and stated that it should be on the appropriate form.

On November 17, 2009, Ms. Lai also wrote to claimant, stating that he had recently requested mileage reimbursement far in excess of what Broadspire had been billed for. (Ex 20). The letter notes that a mileage reimbursement request was enclosed, and claimant was asked to complete it and indicate each date for which he was seeking mileage reimbursement. It appears that copies of Ms. Lai's November 17, 2009 letters to Ms. Harnish and to Mr. Granville were also faxed to WCD on November 17, 2009.

On November 19, 2009, WCD issued the Administrative Order of Dismissal, DMF 09-1462, that is at issue in the present case. (Ex 22). In this Order, Ms. Hudson on behalf of WCD noted that Broadspire had responded that it had not received a request for reimbursement on an itemized reimbursement request form, and that it had not received any billings from Ms. Harnish since August 5, 2008. The order also notes that Broadspire also responded that it wrote to Ms. Harnish requesting billings on the appropriate form and also to Mr. Granville requesting that he

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<sup>1</sup> According to counsel for FMC/Broadspire, as indicated on page 3 of his July 16, 2010 hearing memorandum, the Proposed and Final Order was not appealed, and became final as a matter of law on January 18, 2010.

submit reimbursement requests on a request form. (Ex 22-1, -2). Ms. Hudson advised that OAR 436-009-0010(2) provided that all medical providers shall submit bills to the insurer on a current UB92 or HCFA/CMS 1500 form.

Ms. Hudson noted that OAR 436-009-0025(1)(a) and (b) provided that the worker must request reimbursement from the insurer in writing. (Ex 22-2). Ms. Hudson further stated that the insurer could require reasonable documentation to support the request. If the insurer could not determine whether the costs were related to the accepted compensable injury, the insurer was to inform the worker what information was needed before the request for reimbursement could be processed. Ms. Hudson on behalf of WCD then concluded:

“In this case, Mr. Granville had not previously provided the necessary information to Broadspire. Since Broadspire has not received the necessary information to process Mr. Granville’s request, the request for review is premature and the director will take no further action on this matter. Once the necessary information is submitted to Broadspire and if after Broadspire processes the request a dispute regarding reimbursement remains, Mr. Granville may request review before the director.” (Ex 22-2).

Then Ms. Hudson, on behalf of WCD and its director, issued the Order, indicating that the matter was dismissed without prejudice. (Ex 22-3).

In his December 3, 2009 request for hearing, claimant asserted that the civil penalty was warranted and should stand. (Ex 23-1). Second, claimant noted that just after the order issued, Ms. Harnish received checks for services rendered beginning April 6, 2009, and on other dates, through August 21, 2009. Claimant also contended that Broadspire had not explained why it had not paid according to a previously arranged payment plan, his prescriptions related to treatment for his injury. Last, claimant asserted that he had never received a correct form to be filled out for mileage requests and that Broadspire had never informed him until recently that he would need to submit this on a special form. (Ex 23-2). Attached to claimant’s hearing request were documents showing several payments made to Ms. Harnish by Crawford & Company on November 19, 2009, for various service dates between May 1, 2009 and August 21, 2009. (Ex 23-3 through -5).

### **CONCLUSIONS OF LAW AND OPINION**

The November 19, 2009 Administrative Order of Dismissal, DMF 09-1462, dismissed claimant’s request for administrative review, without prejudice. As Ms. Hudson explained in that Order, because Broadspire did not have a record of previously receiving the disputed bills, on either current UB92 or HCFA/CMS1500 forms, the dispute was not ripe for review.

There are billing statements from LMT Harnish contained in the record before me, however, these are printouts from LMT Harnish’s office, or printouts created by Broadspire/Crawford; none of these are on the forms required by the administrative rule. Thus, it does not appear that WCD erred in dismissing the request for review as to LMT Harnish’s billings.

As also pointed out in the November 19, 2009 Order, Broadspire had not received the necessary information to process claimant's mileage requests, and the prescription reimbursement request. Consequently, Ms. Hudson determined that the request for review was premature and the director would take no further action. She added, however, once the necessary information was submitted to Broadspire and if after Broadspire processed the request a dispute remained, claimant could request review before the director again. Consistent with that, Ms. Hudson issued an Order dismissing the matter, without prejudice.

By dismissing the matter "without prejudice," Ms. Hudson "left the door open" to further review by the director, once it was established that the appropriate documentation had been provided to Broadspire. In other words, if, after submission of the billings on the proper billing forms by LMT Harnish, and after submission of the requests for reimbursement by claimant for mileage and for prescriptions, using the proper forms, Broadspire does not pay them, or if payments are not made in a timely manner, claimant may re-request WCD review.

While I certainly understand claimant's frustration with the process, and while Broadspire's communications with claimant and LMT Harnish may have left something to be desired, the record before me does not establish that the appropriate documentation was provided to Broadspire. The fact that Broadspire ultimately did pay some of LMT Harnish's billings is interesting, and claimant has questioned why these were paid so shortly after issuance of the penalty order, if they were not in Broadspire's possession. In any event, it appears that at least some of the bills have now been paid.

As far as the issues that are before me, which arise out of the November 19, 2009 Order, DMF 09-1462, I do not find any error in the decision of the director's designee, Ms. Hudson, to dismiss the matter, without prejudice. As indicated in that Order, if claimant and LMT Harnish submit their requests on the appropriate forms, and if that is documented, and if afterward, timely reimbursement and payments are not made, claimant may re-request director review.

It follows that the November 19, 2009 Administrative Order of Dismissal should be affirmed.

### **ORDER**

IT IS THEREFORE ORDERED that the November 19, 2009 Administrative Order of Dismissal, No. DMF 09-1462, is affirmed.