
In the ORS 656.260 Managed Care Dispute of

Tammy L. Daugherty, Claimant

Contested Case No: 10-114H

FINAL ORDER

March 15, 2011

TAMMY L. DAUGHERTY, Petitioner

SAIF CORPORATION, Respondent

Before John Shilts, Workers' Compensation Division Administrator

The managed care organization (MCO) in which claimant Tammy L. Daugherty (claimant) was enrolled refused to review claimant's request for approval of a right sacroiliac (SI) joint injection on the grounds the treatment was not directed to the accepted condition. The Workers' Compensation Division's (WCD) Resolution Team (RT) dismissed claimant's requested administrative review and Administrative Law Judge (ALJ) Kate Donnelly affirmed the dismissal following a hearing. Claimant now seeks a director's review of ALJ Donnelly's order.

FACTUAL SUMMARY

Claimant sustained an injury at work in 2008. Insurer SAIF Corporation (insurer) accepted the condition of lumbar strain and enrolled claimant in an MCO. In 2010, a physician submitted a request on claimant's behalf to perform a right SI injection. The MCO refused to review the request. In response to RT's inquiry, insurer stated the refusal was because the requested treatment was excessive, inappropriate, or ineffective, and because it was directed towards a condition that had not been accepted.

RT determined the requested treatment was directed towards a condition that had not been accepted. The reviewer therefore dismissed on the grounds there was no dispute to review and the Workers' Compensation Division therefore did not have jurisdiction. Claimant requested a hearing and ALJ Donnelly affirmed RT's order.

CONCLUSIONS OF LAW

I may only modify the order if it is not supported by substantial evidence or if it reflects an error of law. OAR 436-001-0225(2). Under the substantial evidence standard of review, I cannot make supplemental fact findings. *Liberty Northwest Insurance Corp. v. Kraft*, 205 Or App 59, 62-63 (2006).

The accepted condition is lumbar strain. The requested treatment is for an injection at the right SI joint. Claimant does not cite any evidence in the record suggesting the proposed treatment is directed towards a condition caused in material part by the accepted condition. Claimant does not assert she has filed a claim related to the right SI joint. The issue, then, is whether, under these facts, there is a dispute about the causal relationship between the proposed treatment and the accepted condition that must be transferred to the Workers' Compensation Board (WCB) to be resolved. ORS 656.704(5).

An employer is only required to provide treatment for conditions caused in material part by the compensable injury. ORS 656.245(1)(a). Compensable conditions are those which have been accepted. ORS 656.262(6)(b)(A). Treatment is compensable if it is directed towards the accepted condition, or towards a condition caused in material part by the accepted condition. “[T]o establish the compensability of a medical treatment under ORS 656. 245(1)(a), the condition for which treatment is sought need not be the accepted condition; however, the treatment must be necessitated in material part by the ‘compensable injury,’ which, we said in *Sprague*, is the condition previously accepted.” *SAIF Corporation v. Martinez*, 219 Or App 182, 191 (2008); *see also* ORS 656.005(7)(a), 656.245(1)(a), 656.262(6)(b)(A), 656.283(1), 656.704(3)(a)(A). If there is no factual basis suggesting a particular treatment is directed towards a condition caused in material part by the compensable condition, there is no causal relationship dispute. RT therefore properly dismissed this dispute.

Claimant argues RT should have transferred the matter to the WCB, rather than dismissing. ORS 656.704(5).¹ The WCB has jurisdiction to determine whether a proposed treatment is causally related to the accepted condition. ORS 656.704(3)(b)(C). Claimant’s position is that when an insurer denies treatment on the grounds it is directed towards a condition that has not been accepted, this inherently raises a causal relation issue, because the insurer is impliedly asserting the proposed treatment is not causally related to the accepted condition.²

The difficulty with claimant’s position is that it is speculative. Claimant did not provide evidence to RT that the requested treatment was directed towards either the accepted condition or a condition caused in material part by the accepted condition. Absent such evidence, there is no factual dispute. RT had no evidentiary basis on which to issue a transfer order.

There is also a logical difficulty with claimant’s argument. On its face, it appears to be true that a denial on the grounds treatment is directed towards a condition that is not accepted must also implicitly be a statement that the treatment is not causally related to the accepted condition. Claimant’s argument proves too much. It will always be the case that treatment directed towards a condition that truly is unrelated to the accepted condition will be treatment that is not causally related to the accepted condition. But this does not mean there is a causal relation dispute. There can only be a dispute if there is some evidence the condition being treated was caused in material part by the accepted condition. If there is no evidence of that causal relationship, there is a hypothetical dispute, but no actual, factual dispute.

There is also a significant substantive difference between the two types of denials. One is a denial of compensability, for which the remedy is an appeal to the board. The second is simply a procedural statement by an insurer that it has not yet been asked to render a decision on the compensability of a condition, the remedy being for the worker to request acceptance of a new or

¹ ORS 656.704(5) states in part:

“If a request for hearing or administrative review is filed with either the director of the board and it is determined that the request should have been filed with the other, the dispute shall be transferred.”

² Claimant contends simultaneously that RT should have transferred the matter because insurer’s denial raises a causal relationship issue, and that claimant herself could not request a hearing from the WCB because only the WCD can hear MCO disputes. Under ORS 656.704(3)(a) and 656.704(3)(a)(C), the WCB has jurisdiction over MCO causal relationship disputes.

omitted condition. ORS 656.267(1). The two types of denials are different, and the proper remedy was applied here.

IT IS HEREBY ORDERED RT's June 30, 2010 Administrative Order of Dismissal and ALJ Donnelly's December 28, 2010 Proposed and Final Order are affirmed.