
In the ORS 656.327 Medical Treatment Dispute of

Eric S. Sofich, Claimant

Contested Case No: 09-165H

PROPOSED & FINAL ORDER

January 30, 2012

ERIC S. SOFICH, Petitioner

CITY OF SALEM, Respondent

Before Geoffrey G. Wren, Administrative Law Judge

Pursuant to notice, a hearing was convened on April 18, 2011 in Portland, Oregon, before the undersigned administrative law judge. Claimant was present and represented by Nelson R. Hall. The employer, City of Salem, and its administrator, Tristar Risk Management, were represented by Dennis S. Reese. The hearing was continued for receipt of written closing arguments. The record closed on January 17, 2012, following receipt of written closing arguments.

ISSUE

Medical Services: Claimant seeks reimbursement for physical therapy services provided him during the period August 25, 2008 to October 2, 2008. Claimant contends that he paid for the services himself and that the employer did not reimburse him for his payments.

FINDINGS OF FACT

Claimant suffered compensable injuries on October 30, 2004. He received physical therapy services at Pettygrove Physical Therapy (“Pettygrove”), including services during the period August 2, 2008 to October 2, 2008.¹

On December 3, 2008, the employer requested Director’s review regarding certain physical therapy billings. That matter was transferred to the Board’s Hearings Division for determination whether the billings were causally related to the accepted conditions in this claim. (Ex. 1).

The employer paid Pettygrove directly for services for the following periods and in the following amounts:

August 4, 2008 to August 4, 2008	\$ 258.95
August 25, 2008 to August 27, 2008	\$ 0.00 ²
August 20, 2008 to September 26, 2008	\$1984.26
September 17, 2008 to September 19, 2008	\$ 598.04

¹ Claimant testified that the period of services at issue was August 2, 2008 to October 2, 2008. The employer understood that the period in question was August 25, 2008 through October 8, 2008. As claimant advances the claim for reimbursement at issue, I rely on his testimony regarding the relevant period.

² The employer’s printout of payments identifies this payment as a “Paper Transaction.”

The employer made these payments with respect to a different workers' compensation claim covering claimant. (Ex. 7; *see* Ex. 2).

After determining that it had paid for these services, the employer withdrew its request for administrative review. (Ex. 2). An Amended Order of Dismissal dismissing the December 3, 2008 request for hearing entered on September 25, 2009. (Ex. 3). The Director in turn issued an Administrative Order of Dismissal on October 13, 2009. (Ex. 4). Claimant on October 16, 2009 filed a request for hearing before the Director regarding the Administrative Order of Dismissal. (Ex. 5). On October 20, 2009, the Director referred that matter to the Board's Hearings Division pursuant to ORS 656.704(2)(a) and OAR 436-001-0019. (Ex. 6).

CONCLUSIONS OF LAW AND OPINION

Claimant contends that he is entitled to reimbursement for payments he made directly to Pettygrove for physical therapy services provided during the period August 2, 2008 to October 2, 2008. He seeks an order requiring the employer to reimburse him for his payments.

Claimant's contention presumes that I have subject matter jurisdiction with respect to the substantive claim he advances. I do not. Jurisdiction over medical services disputes lies originally with the Director. ORS 656.245(6); ORS 656.704(3)(a); OAR 436-010-0008(1). The matter actually before me arose from the employer's request for Director's review regarding certain Pettygrove billings. The employer determined after filing its request for review that it already had paid the billings, albeit under a different claim number. The employer requested dismissal of its request for review on the ground that it was moot. (Ex. 2). The Director accordingly entered an Administrative Order of Dismissal on October 13, 2009. (Ex. 5). That is the order claimant appealed and the order that now is before me pursuant to the Director's referral order under ORS 656.704(2)(a).³ The only issue for decision, then, is whether the Director erred in dismissing the employer's request for Director's review.

Claimant has not identified any error in the Director's action dismissing the employer's request for review. I find none. The employer had the right to withdraw its request for Director's review once it determined that the issues for decision were moot. The October 13, 2009 Administrative Order of Dismissal must be affirmed.

ORDER

IT IS HEREBY ORDERED that the October 13, 2009 Administrative Order of Dismissal is affirmed. All other relief is denied.

³ That statute provides:

A party dissatisfied with an action or order regarding a matter other than a matter concerning a claim under this chapter may request a hearing on the matter in writing to the director. The director shall refer the request for hearing to the Workers' Compensation Board for a hearing before an Administrative Law Judge. Review of an order issued by the Administrative Law Judge shall be by the director, and the director shall issue a final order that is subject to judicial review as provided by ORS 183.480 to 183.497.