

**BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**

In the Matter of)	ORDER REMANDING
the Medical Services Dispute of)	TO HEARING OFFICER
James R. Hampton, Claimant)	
)	
SAIF CORPORATION,)	
Petitioner,)	Contested Case No.: H99-115
)	Claim No.: 7857850E
JAMES R. HAMPTON,)	Date of Injury: 6/1/98
Respondent.)	WCD No.: G-907659

This matter came before Hearings Judge Paul E. Vincent on September 24, 1999, and continued to November 10 and November 22, 1999, on Petitioner SAIF Corporation (insurer)'s request for contested case hearing. The July 26, 1999 Administrative Order (order) on review found SAIF liable for diagnostic medical services provided to Mr. Hampton (claimant) between June 2 and June 4, 1998, and on June 26, 1998. Insurer contests the order insofar as it finds insurer responsible for the June 26, 1998 services.

On October 23, 1999, after the request for hearing was filed and during the continuation of the hearing, the 1999 amendments to ORS 656.245 and 656.704 (Senate Bill 728) became effective. Insurer argues that, under the 1999 amendments, the issue is one of causation, a matter concerning a claim within the jurisdiction of the Workers' Compensation Board (Board). However, insurer contends, the 1999 amendments do not apply retroactively and the Director therefore retains jurisdiction of this matter. Claimant argues that because insurer raises the issue of causation, jurisdiction resides with the Board and this matter should be transferred because the director has no jurisdiction to decide it.

Judge Vincent issued a November 22, 1999 Order of Deferral transferring this matter to the Hearings Division of the Board. Judge Vincent found that the 1999 amendments are procedural and apply retroactively; that the ultimate issue is one of diagnostic services, which is within the jurisdiction of the Director; that whether or not a determination of causality and compensability is required before the diagnostic services issue can be reached is a matter for the Board; and deferred further contested case review pending the Board's determination. The Workers' Compensation Division submitted its Notice of Director's Intent to Review on December 21, 1999. Pending issuance of this Order, the Board postponed any action on this matter.

RELEVANT STATUTES

The underlying issue in this matter is whether the June 26, 1998 medical services are compensable "[s]ervices that are necessary to diagnose the worker's condition." ORS 656.245(1)(c)(H). Former ORS 656.704 was clear that disputes arising under ORS 656.245 were

not matters concerning a claim, and were therefore within the jurisdiction of the Director, not the Board. That statute provided:

“[M]atters concerning a claim . . . are those matters in which a worker’s right to receive compensation, or the amount thereof, are directly in issue. However, such matters do not include any disputes arising under ORS 656.245, . . . any other provisions directly relating to the provision of medical services . . .” ORS 656.704(3) (1995).

The 1999 amendments to ORS 656.704 delineated further criteria for determining which matters are matters concerning a claim. ORS 656.704(3)(b) (eff. 10/23/99) provides:

“The respective authority of the board and the director to resolve medical service disputes, other than disputes arising under ORS 656.260, shall be determined according to the following principles:

- (A) Any dispute that requires a determination of the compensability of the medical condition for which medical services are proposed is a matter concerning a claim.
- (B) Any dispute that requires a determination of whether medical services are excessive, inappropriate, ineffectual or in violation of the rules regarding the performance of medical services, or a determination of whether medical services for an accepted condition qualify as compensable medical services among those listed in ORS 656.245(1)(c), is not a matter concerning a claim.
- (C) Any dispute that requires a determination of whether a sufficient causal relationship exists between medical services and an accepted claim to establish compensability is a matter concerning a claim.
- (D) The board and the director shall adopt rules to facilitate the fair and orderly determination of disputes that involve matters concerning a claim and additional issues. Such rules shall first require the determination of those issues that are matters concerning a claim.”

CONCLUSIONS

I adopt Judge Vincent’s order insofar as it applies to retroactivity of 1999 legislative amendments to ORS 656.704(3). I find that the legislature intended Senate Bill 728 to apply retroactively to all pending cases.

However, insofar as it applies to matters concerning a claim, I do not adopt that portion of Judge Vincent’s order stated below:

“ *** I believe the issue of whether this matter requires such a determination is within the jurisdiction of the Workers’

Compensation Board, not the Director. Accordingly, insofar as claimant's hearing request in WCD Case No. H99-115 pertains to a request for action by the Workers' Compensation Division, the case is dismissed. This matter is transferred to the Workers' Compensation Board for further proceedings designed to resolve this matter concerning a claim.

"Pursuant to ORS 656.704(3)(b)(D), contested case review of all remaining matters is deferred until matters concerning a claim are resolved. After compensability is resolved, the Administrative Law Judge is requested to submit a copy of any order or settlement document to the director. The director will then resume contested case review."

ORS 656.704 does not give the Board authority *over* the Director to decide which matters concern a claim and which do not. This matter was pending before the Director on the effective date of the 1999 amendments. The Director has the authority to determine whether she retains jurisdiction over it under those amendments.

Under the Director's interpretation and application of ORS 656.704, I find that this is not a matter concerning a claim, and that I retain jurisdiction to hear it. As Judge Vincent states in his order:

"*** the real issue in dispute is whether the medical services rendered to claimant on June 26, 1998 are diagnostic in nature. This is a question within the Director's jurisdiction. Medical services dispute which require a determination of whether the service is diagnostic in nature do not *require* a determination of the compensability of the medical condition for which medical services are proposed, nor do they *require* a determination of whether a sufficient causal relationship exists between the medical services and the accepted claim to establish compensability. As such, diagnostic service disputes fall under the ORS 656.704(3)(a) exemption of ORS 656.245, 656.248, 656.260 and 656.327 from 'matters concerning a claim' and are solely within the director's jurisdiction. *See* ORS 656.704(3)(g)." (Emphasis in original.)

I adopt Judge Vincent's reasoning as stated above. Diagnostic service disputes are not matters concerning a claim under ORS 656.704(3), and are within the jurisdiction of the Director.

REMAND

Before a Final Order can issue, the parties are entitled to the opportunity to present argument on the medical evidence and the June 26, 1998 medical services. At the September 24, 1999 telephone hearing, exhibits were admitted; opening statements were presented; claimant's testimony was taken; and the record was left open for closing arguments as the parties were

given a continuance to further develop the record. At the November 10, 1999 telephone conference, the parties presented argument, on the record, as to the applicability of Senate Bill 728, and the effect on the respective jurisdiction of the Board and the Director over this matter. At the November 24, 1999 continuation of the telephone hearing, the parties presented argument as to the nature of the issue under the 1999 amendments to ORS 656.245 and 656.704. At no time during the contested case review have the parties had the opportunity to present argument as to the June 26, 1998 services and the medical evidence.

This matter is hereby remanded to the Hearing Officer Panel with instructions to reinstate the matter, to re-open the record for the purposes of argument on the underlying issue, and to schedule a date for continuation of the hearing.

Due to delays in this matter beyond the control of the parties, I respectfully request that, to the extent practicable, the parties and the Hearing Officer Panel give this matter priority.

IT IS SO ORDERED.

DATED this _____ day of September, 2000.

**MARY C. NEIDIG, DIRECTOR
DEPARTMENT OF CONSUMER
AND BUSINESS SERVICES**

By: _____
John Shilts, Administrator
Workers' Compensation Division