



1 without objection. At hearing, I left the record open for three additional documents which were  
2 received without objection: Exhibit A, an 801 form dated September 15, 1998; Exhibit B, a  
3 Notice of Acceptance dated September 21, 1998; Exhibit C, a Modified Notice of Acceptance  
4 dated January 6, 1999.

5 **FINDINGS OF FACT**

6 I adopt the findings of fact contained in the administrative order on appeal with the  
7 following supplementation.

8 On September 15, 1998, claimant suffered a compensable injury while working as a farm  
9 machine operator. (Ex. A). Insurer initially accepted a scalp laceration and later added a neck  
10 strain as compensable medical conditions. (Exs. B and C)

11 Prineville Physical Therapy provided treatment to claimant on August 11, 1999 through  
12 September 10, 1999. (Ex. 5 and 6). The treatment was directed toward the right shoulder and  
13 thoracic spine. (Exs. 6A and 6E). Insurer declined payment of the physical therapy bills because  
14 it was directed toward noncompensable conditions. (Ex. 11). On June 16, 2000, Leland Beemer,  
15 MD opined that the physical therapy was necessitated by the September 15, 1998 work injury.  
16 (Ex. 13). SAIF received Dr. Beemer's letter on August 9, 2000 and paid the physical therapy  
17 bills on September 7, 2000. (Ex. 20; testimony of Lisa Coates).

18 Dr. Beemer referred claimant to Norwyn Newby, MD for evaluation of right shoulder  
19 pain. (Ex. 7-1). Dr. Newby provided treatment to claimant on November 8, 1999 through  
20 November 17, 2000. (Ex. 34). On November 12, 1999, Dr. Newby requested pre-authorization  
21 for a cervical MRI. (Ex. 8). On March 16, 2000, Dr. Newby indicated to SAIF that claimant's  
22 treatment was not related to the accepted cervical strain. (Ex. 8A). On November 3, 2000, SAIF  
23 paid Dr. Newby's bills as diagnostic medical services. (Ex. 24; testimony of Lisa Coates).

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1 Here, the treatment in question was directed to the right shoulder and thoracic spine  
2 which were outside the scope of acceptance. The insurer had a legitimate doubt as to its liability  
3 for the medical bills until June 16, 2000 when Dr. Beemer issued a medical opinion relating the  
4 treatment to the compensable injury. During the period of the delayed payment, insurer failed to  
5 investigate its liability. The record contains no evidence that insurer contacted the medical  
6 provider to clarify the relationship, if any, between the disputed medical treatment and the  
7 compensable work injury. Having failed to investigate its liability, insurer paid the medical bills  
8 nearly one year after the dates of service. Based on the evidence, I conclude that insurer paid the  
9 bills untimely.

10 Pursuant to ORS 656.262(11), if an insurer unreasonably denies or delays compensation,  
11 it shall be liable for a penalty up to 25 percent of the amounts then due. OAR 436-060-0155(2)  
12 provides:

13 “Requests for penalties under this section must be in writing,  
14 stating what benefits have been delayed or remain unpaid, and  
15 mailed or delivered to the Division within 180 days of the alleged  
violation.”

16 Here, the violations occurred 45 days after the dates of service ending in November 2000.  
17 OAR 436-060-0155(2) required claimant to request sanctions no later than June 2000. Claimant  
18 first requested penalties for late payment of the medical bills on September 15, 2000. Claimant’s  
19 request for penalties is barred as untimely filed.

20 Attorney Fees

21 Claimant has prevailed not in a contested case hearing, and therefore, is entitled to no  
22 attorney fee. ORS 656.385(1).

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**ORDER**

IT IS HEREBY ORDERED that:

The Notification of Decision dated November 22, 2000 is affirmed.

Dated this \_\_\_\_\_ day of September, 2001

\_\_\_\_\_  
Catherine P. Coburn  
Administrative Law Judge  
Central Hearings Panel

**NOTICE OF REVIEW AND APPEAL RIGHTS**

As provided in ORS 183.460, the parties are entitled to file written exceptions, including argument, to this Proposed and Final Contested Case Hearing Order. The exceptions must be served on the parties and filed with the Administrator of the Workers' Compensation Division at the address set forth below within 30 days following the date of service of this order. Written responses to exceptions must be filed within 20 days of service of the exceptions. Replies, if desired, must be filed within 10 days of service of the response.

If no exceptions are filed, this order shall become final upon expiration of 30 days following the date of service on the parties.

After this order becomes final, you are entitled to judicial review pursuant to the provisions of ORS 183.480. Judicial review may be obtained by filing a petition with the Court of Appeals within 60 days from the date that this order becomes final.

Mail any exceptions and a copy of any petition for judicial review to:

Technical Coordinator, Policy Section  
Workers' Compensation Division  
Department of Consumer and Business Services  
350 Winter Street NE, Rm. 27  
Salem, OR 97301-3879