

In the Medical Fee Dispute of
Randy D. Boydston, Claimant

Contested Case No: 05-127H

FINAL ORDER

July 18, 2006

SAIF CORPORATION, Petitioner
JAMES A. COULTER, M.D., Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

Petitioner SAIF Corporation, through its attorney Jerome P. Larkin, timely filed exceptions to Office of Administrative Hearings Administrative Law Judge (ALJ) Catherine P. Coburn's January 10, 2006 Proposed and Final Order. Respondent Dr. Coulter, through his attorney William L. Ghorso, responded.¹ This matter comes before the director for a final order. The issue is fees charged for a worker requested medical examination. I affirm.

I adopt the facts as found by the Medical Review Unit (MRU) and the ALJ.

The claimant was injured in 1980. He had cervical surgery on January 19, 2004. SAIF denied payment for the surgery, contending it was not compensably related to the 1980 injury claim. The claimant requested and qualified for an examination under *former* ORS 656.325(1)(b) (2003).² The director selected James A. Coulter, M.D., to conduct the exam. The exam occurred on October 8, 2004. Dr. Coulter submitted a bill to SAIF for \$14,075 – \$2,000 for 1-1/2 hours of exam and travel time; \$7,275 for 23-1/2 hours of record review and x-ray review; \$300 for 1-1/2 hours of research; and \$4500 for 18 hours preparing a 26-page report. SAIF discounted the billing and paid Dr. Coulter a total of \$2,877.

Dr. Coulter requested review by the Medical Review Unit (MRU). SAIF responded, in part, that the exam exceeded the scope of a worker requested medical exam under the statute and applicable rule. MRU, by Administrative Order dated August 10, 2005, found that SAIF incorrectly reduced Dr. Coulter's billing. MRU, however, found that Dr. Coulter incorrectly billed for travel time and research time, reduced the total bill by \$1,100, and concluded that

¹ The parties agreed to an extension of time in which Dr. Coulter could file his response to SAIF's exceptions.

² ORS 656.325 was amended effective January 1, 2006. The language that appeared in ORS 656.325(1)(b) was moved to (1)(e) and amended to reflect a different list from which the director selects the physician to perform the exam. The language in effect at the time of the exam in this case provided:

“If the worker has made a timely request for a hearing on a denial of compensability as required by ORS 656.319 (1)(a) that is based on one or more reports of examinations conducted pursuant to paragraph (a) of this subsection and the worker's attending physician or nurse practitioner authorized to provide compensable medical services under ORS 656.245 does not concur with the report or reports, the worker may request an examination to be conducted by a physician selected by the director from the list described in ORS 656.268 (7)(d). The cost of the examination and the examination report shall be paid by the insurer or self-insured employer.”

SAIF owed \$10,098 in addition to what it had already paid. SAIF requested a hearing and the ALJ affirmed.

SAIF contends \$3,200 is a reasonable fee for the worker requested medical exam. SAIF first argues that neither the statute nor the rule authorize the worker, the physician, or the ALJ to expand the medical record that the insurer submits to the physician, and Dr. Coulter's review of records submitted by the claimant and his attorney was excessive. SAIF next argues that the scope of the review exceeded the scope of the denial and the chart review on which the denial was based. Further, SAIF argues, the portions of the exam and report related to claimant's lumbar spine exceeded the scope of a worker requested medical exam in this case. SAIF finally argues that Dr. Coulter exceeded the scope of such an exam by addressing conditions that were not at issue at the time SAIF denied claimant's January 19, 2004 surgery. I reject SAIF's arguments.

ORS 656.325(1)(b) allows the worker to obtain an examination if certain conditions are met, but it does not specify the parameters of that examination. The director adopted OAR 436-060-0147 to implement ORS 656.325(1)(b). The relevant provisions of the rule³ provide,

“* * * * *

“(7) The worker and/or the worker's legal representative shall schedule the exam with the selected physician and notify the insurer and the Workers' Compensation Board of the scheduled exam date within 14 days of the notification date in (6) of this rule.

* * *

“(8) The insurer shall send the physician the worker's complete medical record on this claim and the original questions asked of the Insurer Medical Examination(s) physician(s) no later than 14 days prior to the date of the scheduled exam.

“(9) The worker or the worker's representative shall communicate questions related to the compensability denial in writing to be answered by the physician at the exam to the physician at least 14 days prior to the scheduled date of the exam. An unrepresented worker may consult with the Injured Worker Ombudsman for assistance.

“(10) Upon completion of the exam the physician shall address the original Insurer Medical Examination(s) questions and the questions from the worker or the worker's representative pursuant to section (9) and send the report to the worker's legal representative, if any, or the worker, and the insurer within 5 working days.

³ Adopted by WCD Admin. Order 04-051, effective 2/29/04.

“(11) The insurer shall pay the physician selected pursuant to this rule in accordance with OAR 436-009. Delivery of medical services to injured workers shall be in accordance with OAR 436-010.

“* * * * .”

The rule requires the insurer to send the examining physician the worker’s complete medical record and the original IME questions. The rule allows the worker to submit questions related to the compensability denial, if they are submitted at least 14 days prior to the exam. The rule requires the physician to address the questions submitted. The rule does not expressly authorize the worker to submit additional records or the physician to address issues beyond the questions submitted. However, the rule does not prohibit the worker or the physician from doing so. Here, Dr. Coulter performed a neurological examination, reviewed the information provided to him regarding a 24-year old claim, and wrote a comprehensive report. I find no basis in the statute or rule on which to find that Dr. Coulter’s exam and report were excessive. As to SAIF’s remaining arguments,⁴ I am persuaded by and adopt the reasoning of MRU and the ALJ.

In his response to SAIF’s exceptions, Dr. Coulter renews his request for costs including attorney fees. Dr. Coulter does not specify the statutory basis for such a request, and I find none. His request is therefore denied.

IT IS HEREBY ORDERED that the January 10, 2006 Proposed and Final Order is affirmed.

DATED this 18th day of July, 2006.

⁴ SAIF argued before MRU that the claimant was not entitled to an examination under ORS 656.325(1)(b); that Dr. Coulter did not submit his report within the timeframe required in the rule; and that Dr. Coulter did not charge his usual and customary fee. SAIF did not make these arguments at hearing or in its exceptions, and I therefore do not address them.