
In the ORS 656.340 Vocational Assistance Dispute of
DiAnna L. Caswell, Claimant

Contested Case No: 06-210H

FINAL ORDER

August 27, 2007

DIANNA L. CASWELL, Petitioner
SAID CORPORTATION, Respondent

Before John Shilts, Workers' Compensation Division Administrator

Respondent, SAIF Corporation, through attorney David L. Runner, timely filed exceptions¹ to Workers' Compensation Board Administrative Law Judge (ALJ) John Mark Mills' May 24, 2007 Proposed and Final Order. Claimant, through attorney Philip H. Garrow, responded.

The issue is whether the decision of the ALJ concluding that the claimant is eligible for vocational assistance because she could not return to regular work was proper. SAIF Corporation argues that the determination of eligibility for vocational assistance requires additional analysis and that the determination of whether the claimant is eligible for vocational assistance should be remanded to SAIF Corporation for a "substantial handicap" evaluation under OAR 436-120-0340. Claimant argues that the ALJ's order should be affirmed and that the evidence submitted by SAIF Corporation concerning the eligibility evaluation was not part of the record and cannot be considered.

The conclusion that the claimant is eligible for vocational assistance requires a separate analysis than merely concluding the claimant cannot return to regular work. SAIF Corporation properly cites OAR 436-120-0340. Therefore, the case is remanded to SAIF Corporation to determine claimant's eligibility for vocational assistance.² The decision of the ALJ that the claimant could not return to regular work has not been challenged under this exception.

IT IS HEREBY ORDERED the May 24, 2007 Proposed and Final Order is adopted except the "Order" portion on the bottom of page 5, which is modified as follows:

1) The Director's Order dated December 13, 2006 affirming the insurer's July 31 denial of claimant's vocational assistance is modified and reversed. Claimant is unable to return to her job at injury. SAIF Corporation is ordered to perform a substantial handicap evaluation under OAR 436-120-0340.

¹ Respondent filed a request for reconsideration under OAR 436-001-0246(6) addressed to ALJ John Mark Mills. It was properly forwarded to the director under OAR 436-001-0246(8).

² The question of whether the evidence submitted by SAIF concerning the eligibility evaluation is not addressed in this decision because the consideration of the evidence is not necessary in light of the remand.