

In the Vocational Assistance of
Jane E. Tristany, Claimant
Contested Case No: 07-060H
PROPOSED & FINAL ORDER

September 7, 2007

JANE E. TRISTANY, Petitioner
PROVIDENCE HEALTH SYSTEM-OREGON, Respondent
Before Steve Rissberger, Administrative Law Judge

Pursuant to notice, a hearing was convened on August 8, 2007, in Salem, Oregon, before Administrative Law Judge Rissberger. Claimant appeared with her attorney, Donald Hooton. Providence Health System – Oregon and Sedgwick Claims Management Services appeared by telephone through Allen Lyons, attorney at law. Exhibits H1 through H9 are admitted into evidence. The record closed at the conclusion of the hearing.

ISSUES

Vocational Assistance—Eligibility: Whether claimant is eligible for Vocational Assistance based on the criteria contained at OAR 436-120-0320?

FINDINGS OF FACT

Claimant is 49 years of age. She has worked for the employer, Providence Health System, as a surgical technician since September 19, 2005.

On November 29, 2005, claimant slipped on a wet floor while at work. She twisted her right ankle as she fell and landed on her left hip and both forearms. (Ex. H-1.) Victor Krisciunas, M.D., her primary care physician, examined and treated her on the next day. Dr. Krisciunas noted that claimant's left hip was most painful. Claimant was not experiencing lumbar pain or sacroiliac joint pain.

A predecessor in interest to Sedgwick Claims Management Services, the employer's workers' compensation administrator, issued a notice on December 19, 2005 accepting a left hip contusion and a right ankle sprain. The notice classified it as a disabling claim. Sedgwick issued a Modified Notice of Acceptance on August 28, 2006. The notice accepted the following conditions: "disabling left hip contusion, right ankle sprain, left shoulder strain, cervical strain and lumbar strain." (Ex. H-3.)

On February 20, 2007, Sedgwick issued an Updated Notice of Acceptance at Closure and a Notice of Closure. The closure notice found that claimant was medically stationary as of September 13, 2006 and awarded claimant no PPD. (Ex. H-4.) Just seven days later, on February 27, 2007, the Workers Compensation Division's (WCD) Rehabilitation Review Unit issued a Notice of Ineligibility for Vocational Assistance, effective on the date of issuance. The

notice reported that claimant was ineligible for vocational assistance because she had been released to return to her regular work. (Ex H-5.)

Claimant appealed the Rehabilitation Review Unit's ineligibility determination pursuant to a letter from claimant's legal counsel, dated April 23, 2007. In the letter, claimant's legal counsel reported that claimant was also appealing Sedgwick's Notice of Closure. (Ex. H-6.)

WCD's Appellate Review Unit issued an Order of Reconsideration on May 1, 2007. It affirmed Sedgwick's Notice of Closure and ordered no PPD. (Ex. H-7.) On the following day, May 2, 2007, the Rehabilitation Review Unit issued a Director's Review and Order. It determined that claimant was ineligible for vocational assistance because claimant did not have an award of PPD.

CONCLUSIONS OF LAW AND OPINION

The sole issue on appeal is claimant's eligibility for vocational assistance. Both parties agreed that claimant is ineligible for vocational assistance without an award of PPD. As a consequence, the outcome of this case hinges on the results of claimant's appeal of WCD's Order of Reconsideration, dated May 1, 2007, companion case 07-03063. These matters were consolidated for hearing.

A director's administrative review regarding vocational assistance may be modified only if it violates a statute or rule, exceeds the statutory authority of the agency, was made upon unlawful procedure, or was characterized by an abuse of discretion or clearly unwarranted exercise of discretion. ORS 656.283(2)(c). Thus, my review of the director's order is a limited one.

OAR 436-120-0320(2)(c) provides, in effect, that a worker is not eligible for vocational assistance if the worker's claim is closed without an award of permanent disability. In this case, WCD's Appellate Review Unit issued a May 1, 2007 Order on Reconsideration finding that claimant had not provided medical evidence sufficient to demonstrate that she was entitled to PPD. Claimant's appeal of the Order on Reconsideration with respect to the PPD issue was consolidated with this vocational assistance case before the Hearing Division of the Workers' Compensation Board. Following a hearing on August 8, 2007, I issued an Opinion and Order affirming the Order on Reconsideration and concluding that claimant had not demonstrated that she was entitled to a PPD award. Accordingly, I conclude here that the Director's Review and Order of May 2, 2007 correctly held that claimant is ineligible for vocational training.

ORDER

IT IS THEREFORE ORDERED that

The Director's Review and Order of May 2, 2007 is affirmed. Claimant is not eligible for vocational assistance.