

In the ORS 656.260 Managed Care Dispute of

**Donald G. Sloan, Claimant**

Contested Case No: 10-071H

**FINAL ORDER**

December 23, 2010

SAIF CORPORATION, Petitioner

DONALD G. SLOAN, Respondent

Before Cory Streisinger, Director, Department of Consumer and Business Services

The Workers' Compensation Division's (the division) Resolution Team (RT) dismissed a dispute claimant brought on the grounds the underlying issue was one of causation and jurisdiction therefore rests with the Workers' Compensation Board. ORS 656.704.<sup>1</sup> Administrative Law (ALJ) Judge Geoffrey G. Wren issued a Proposed and Final Order vacating RT's order for lack of jurisdiction and ordering the matter transferred to the Workers' Compensation Board. I find the division did have jurisdiction to determine whether it had jurisdiction and therefore acted properly in issuing a dismissal order.

**FACTUAL SUMMARY**

Claimant suffered a compensable injury. The accepted conditions are comminuted tibial plateau fracture, right knee, right chest wall contusion, L2 and L3 non-displaced transverse process fractures, umbilical hernia, left inguinal hernia, lumbosacral strain, right knee anterior cruciate ligament tear, right knee medial collateral injury, post-surgical staphylococcus aureus infection at the umbilical hernia surgery incision, right and left hydroceles, right post inguinal herniorrhaphy neuralgia, and thoracic contusion. Claimant was enrolled in the Oregon Health Systems (OHS) Managed Care Organization.

Dr. Fry is claimant's attending physician. He requested approval from OHS for a consultation with and possible treatment by Dr. Peterson. The proposed treatment by Dr. Peterson was medial branch block or radio frequency ablation treatment. The diagnoses which Dr. Fry provided as the basis for the consultation with Dr. Peterson were a closed fracture at L3 and contusion of the back with intact skin surface. OHS denied authorization for this consultation on the grounds it was directed towards conditions that had not been claimed or accepted.

<sup>1</sup> ORS 656.704 provides in part:

(1) Actions and orders of the Director of the Department of Consumer and Business Services regarding matters concerning a claim under this chapter, and administrative and judicial review of those matters, are subject to the procedural provisions of this chapter and such procedural rules as the Workers' Compensation Board may prescribe.

(2)(a) A party dissatisfied with an action or order regarding a matter other than a matter concerning a claim under this chapter may request a hearing on the matter in writing to the director.

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(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.

Claimant requested director review of the denial. On April 13, 2010, RT issued an Administrative Order of Dismissal. That order found OHS had denied the request on the grounds the proposed treatment was not directed to an accepted condition, that claimant had not asked for acceptance of a new or omitted condition, and that there was an issue of compensability. The order then dismissed the matter without prejudice.

Claimant then requested a hearing. Following the hearing, ALJ Wren issued his Proposed and Final Order in which he found RT did not have jurisdiction over the dispute because it concerned the causal relationship between the accepted injuries and the proposed treatment. He concluded RT had erred in issuing its dismissal order, vacated that order, and then ordered that the matter be transferred to the Workers' Compensation Board. The insurer, SAIF Corporation, filed exceptions to the ALJ's order, asserting the administrative order should not have been vacated. Claimant filed a reply to the exceptions, arguing it was correct to vacate the administrative order. It does not appear that any party disputes that jurisdiction is properly with the Workers' Compensation Board.

### CONCLUSIONS OF LAW

This is a managed care dispute under ORS 656.260. I may therefore modify the administrative order only if it is not supported by substantial evidence or reflects an error of law. OAR 436-001-0225(2).

I conclude it was proper for RT to dismiss the matter and that the Proposed and Final Order is based on an error of law which I can correct. RT did have jurisdiction to issue the dismissal order.

The proposed order finds RT did not have jurisdiction to resolve the dispute because the dispute concerns the causal relationship between the accepted condition and the proposed treatment. This finding is correct. Jurisdiction over a dispute concerning causation rests with the board, not the division. ORS 656.704(1), (2). However, this did not deprive the division of jurisdiction to determine whether or not it had jurisdiction to resolve the dispute. An adjudicative body does have jurisdiction to determine whether or not it has jurisdiction over a dispute presented to it. *Emerald People's Utility District v. Energy Facility Siting Council*, 321 Or 562, 564-565 (1995); *Van de Hey v. United States National Bank*, 313 Or 86, 92-93 (1992). Where jurisdiction is lacking, dismissal is the standard resolution. See *Meyer v. Joseph*, 295 Or. 588, 590, (1983), superseded by statute, *Baugh v. Bryant Ltd. Partnerships I through XV*, 312 Or 635, 641 (1992); *Lindsay v. Nicewonger Co., Inc.*, 203 Or App 750, 756 (2006); *Strawn v. Farmers Ins. Co.*, 195 Or App 679, 687 (2004). Once the division had properly asserted jurisdiction in order to determine whether it had jurisdiction to address the merits of the dispute, the dispute was before the division. The dispute had to be resolved in some manner in order to end the division's jurisdiction and to allow the matter to proceed to the Workers' Compensation Board. Dismissal was the appropriate mechanism to remove the dispute from the division's jurisdiction.

**IT IS HEREBY ORDERED** that the October 4, 2010, Proposed and Final Order is reversed and the April 13, 2010, Administrative Order of Dismissal is affirmed.