

In the ORS 656.260 Managed Care Dispute of

**Gary S. Knight, Claimant**

Contested Case No: 11-067H

**PROPOSED & FINAL ORDER**

August 18, 2011

SAIF CORPORATION, Petitioner

GARY S. KNIGHT, Respondent

Before Darren Otto, Administrative Law Judge

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A hearing was scheduled to be heard in the above-entitled matter on June 23, 2011 in Pendleton, Oregon before Administrative Law Judge Darren Otto of the Workers' Compensation Board. The parties, however, asked that the matter be decided based on the written record and the request was granted. Claimant is represented by his attorney Dale Johnson. The employer, City of Umatilla, and its insurer, SAIF Corporation, are represented by their attorney Janelle Irving. On July 11, 2011, SAIF submitted its initial written closing argument. On July 25, 2011, claimant filed his response. The hearing concluded on July 29, 2011 with SAIF's reply. Exhibits 1 through 23 are received into evidence.

**ISSUE**

SAIF appeals that portion of the Director's March 29, 2011 Administrative Order which found SAIF liable for claimant's mileage reimbursement request of 321 miles, instead of his previous request of 221 miles, incurred on July 14, 2008 for a compensable medical appointment. The issue is whether the Administrative Order which found SAIF liable for the difference of \$50.50 was supported by substantial evidence in the record.

**FINDINGS OF FACT**

On March 25, 2007, claimant was struck in the head while working as a police officer for the employer (Ex. 13-2). Following that incident, SAIF accepted claimant's scalp contusion, right hand abrasion, cervical strain, mild concussion, and post concussion syndrome as a disabling industrial injury (Exs. 2, 11, 13, and 22).

On July 14, 2008, claimant traveled from his residence in Hermiston, Oregon to the offices of J. Ha, M.D., in Bend, Oregon for treatment of his compensable injuries (Exs. 4, 5, 7, and 22). Initially, claimant asked SAIF for mileage reimbursement in the amount of 221 miles (Ex. 5-14). Subsequently, claimant re-billed SAIF for mileage to that appointment in the amount of 321 miles (Ex. 5-4). SAIF refused to pay for the difference between 221 and 321 miles (Ex. 7). After July 14, 2008, claimant continued to see Dr. Ha and billed SAIF mileage for those appointments in the amount of 321 miles (Exs. 5 & 7).

Claimant appealed SAIF's refusal to pay the difference of \$50.50 for mileage reimbursement and, on March 29, 2010 an Administrative Order found SAIF liable for claimant's mileage request of 321 miles on July 14, 2008 (Ex. 22). SAIF appealed that Administrative Order (Ex. 23).

## CONCLUSIONS OF LAW AND OPINIONS

SAIF contends that the Administrative Order finding it liable for claimant's mileage reimbursement request in the amount of 321 miles, instead of 221 miles, was not supported by substantial evidence in the record and should be reversed. Claimant asserts that the Administrative Order is supported by substantial evidence and the Administrative Order should be approved.

Review of the Director's Administrative Order is for substantial evidence or errors of law. *Liberty NW Ins Corp. v Kraft*, 205 Or App 59 (2006). Under "substantial evidence" review, the reviewing tribunal "look[s] at the whole record with respect to the issue being decided, rather than at one piece of evidence in isolation. If an agency's finding is reasonable, keeping in mind the evidence against the finding as well as the evidence supporting it, there is substantial evidence." *Armstrong v. Asters-Hill Co*, 90 Or App 200, 206 (1988). Thus, "substantial evidence" review "is not what has been referred to as the 'any evidence' rule \*\*\* but it is also not *de novo* review." *Id.* (citation omitted); *see also United Sates Bakery v Shaw*, 199 Or App 286, 288-89 (2005). Under a substantial evidence review, the administrative law judge may not supplement the evidentiary record developed by the MRU. *Kraft, supra*.

Initially, claimant submitted a mileage reimbursement request form with SAIF in the amount of 221 miles for his medical appointment with Dr. Ha on July 14, 2008 (Ex. 5-14). Subsequently, however, claimant amended that mileage reimbursement request by alleging mileage in the amount of 321 miles (Ex. 5-4). On other occasions, claimant saw Dr. Ha and also requested mileage in the amount of 321 miles (Ex. 5, pgs. 23, 24 & 26). The Administrative Order concluded, "Regarding July 14, 2008, [claimant] stated he drove 321 miles instead of his original billing of 221 miles when traveling from his home to Dr. Ha. The director finds the 321 miles to be within the round trip mileage between [claimant's] home and Dr. Ha's office; therefore SAIF is liable for an additional payment in the amount \$50.50 (321-221 times \$.50.5)." (Ex. 22, p. 4-5) Claimant's corrected statements in the record that he drove 321 miles to Dr. Ha's office on July 14, 2008, and did so on other occasions as well, were un rebutted and constituted substantial evidence supporting the Director's Order. Therefore, SAIF has failed to carry its burden of proof and the Administrative Order will be approved.

ORS 656.385(1) provides that the Administrative Law Judge shall require the insurer to pay a reasonable attorney fee to claimant's attorney when claimant prevails in a dispute of compensation benefits or medical services pursuant to ORS 656.245. ORS 656.385(1) further provides that an attorney fee awarded under that section may not exceed \$3,000.00 absent showing of extraordinary circumstances.

Pursuant to the factors outlined in OAR 436-001-0400, including the three hours of time claimant's attorney devoted to the case, the simplicity of the issue, the low value of the interest involved, and the high skill of the attorneys and the quality of representation, I conclude that a reasonable attorney fee in this case is \$800.00.

**ORDER**

IT IS HEREBY ORDERED the the March 29, 2011 Administrative Order is approved in its entirety.

IT IS FURTHER ORDERED that the City of Umatilla and SAIF Corporation are assessed a reasonable attorney fee pursuant to ORS 656.385(1) in the amount of \$800 (Eight hundred dollars) to be paid directly to claimant's attorney.