
In the ORS 656.327 Medical Treatment Dispute of

Drew M. Lonon, Claimant

Contested Case No: 12-098H

ORDER REMANDING

February 14, 2013

DREW M. LONON, Petitioner

TRAVELER'S INSURANCE, Respondent

Before Robert Pardington, Administrative Law Judge

A hearing convened and closed in this matter on January 28, 2013, in Portland, Oregon, before Administrative Law Judge Robert Pardington. Claimant was present and represented by attorney Phil Lebenbaum. The employer, G Four Productions, and its insurer, Traveler's Insurance, were represented by attorney Susan Maga.

Exhibits 1 through 130, the record from the Worker's Compensation Division (WCD), were admitted.

ISSUE

Medical Services (reimbursability/liability) – Specifically, hand therapy on April 8, 2011, Armworks Physical Therapy, from June 13, 2011 through September 28, 2011. Claimant appeals those portions of the October 15, 2012 Administrative Order. (Ex. 127).

FINDINGS OF FACT

The Court of Appeals has held that on this “substantial evidence” standard of review, making new or supplemental “findings” of fact is not appropriate. *Liberty Northwest Insurance Co. v. Kraft*, 205 Or App 59, 62-63 (2006). Accordingly, I adopt the Findings of Fact set forth in the October 5, 2012 Administrative Order. A summary of some pertinent facts will be included in the discussion below.

CONCLUSIONS OF LAW AND OPINION

Claimant has a compensable claim for injuries stemming from a December 21, 2006 injury. The accepted conditions are right wrist sprain/strain, contusion, and right median nerve contusion/neuropathy.

Claimant has treated with several providers, including current attending physician Dr. Verzosa. On April 8, 2011, Dr. Verzosa referred claimant for treatment with hand therapy specialists. (See Ex. 74-1, 127-6).

After that one service, claimant decided not to continue with hand therapy, in favor of further physical/occupational therapy. He proceeded with therapy at Armworks, from June 13, 2011 through September 28, 2011. (Exs. 77, 127-7, -10).

After the insurer denied liability/reimbursability of these and other medical services, claimant requested administrative review with the WCD.

In the eventual October 15, 2012 Administrative Order, the WCD held that these services were not reimbursable, due and payable. (Ex. 127-20).

The parties agree that the Administrative Order may be modified only if it is not supported by substantial evidence or reflects an error of law. ORS 656.327(2); OAR 436-001-0225(2).

The October 5, 2012 Administrative Order held that the insurer was not liable for the currently disputed medical services because there was no completed “treatment plan.” (Ex. 127-17, -18). OAR 436-010-0230(4).

Claimant first contends that it did not have proper notice that the insurer was disputing the existence of “treatment plans.” The insurer responds that it did, in fact, raise the specific issue of lack of treatment plans in several letters to the WCD. I agree. (See Exhibits 95, 96, 105, 111, 113, citing OAR 436-010-0230).

In any event, the WCD has held that the Medical Review Unit (MRU) does not have any obligation to notify the parties of the specific issues it will consider in its review, and the claimant has the obligation to meet all elements of its burden of proof. See *Jennifer E. Prettyman*, 17 CCHR 77, 80-81 (2012) (a party need not raise issues in the Specification of Issues form, if they are addressed in “accompanying legal argument”) *Shanda M. Dalhaug*, 11 CCHR 60, 61 (2006) (MRU has no obligation to notify the parties of the specific issues it will consider).

Alternatively, claimant contends that the requisite treatment plans have now been submitted, so the Administrative Order is not currently supported by substantial evidence or substantial reason (given an allegedly inadequate response to his request for reconsideration), and a remand to the WCD is appropriate. (See Ex. 128).

OAR 436-001-0170(5) allows an ALJ to remand to the WCD where appropriate. See *Blake Jackson*, 17 CCHR 84 (2012).

Substantial evidence includes “substantial reason.” See *Drew v. Psychiatric Security Review Board*, 322 Or 491 (2006); *Durwood McDowell*, 7 CCHR 16, 20-21 (2002). An order is supported by “substantial reason” if it “articulates the reasoning that leads from the facts found to the conclusions drawn.” *Walker v. Providence Health System Oregon*, ___ Or App ___ (January 30, 2013); *Salosha, Inc. v. Lane County*, 201 Or App 138, 143 (2005).

Here, the WCD treated claimant’s October 17, 2012 letter and request for abatement as a Request for Reconsideration. (See Ex. 129). OAR 436-010-0008(10)(c)(C). Nevertheless, in an October 22, 2012 letter to the parties, the WCD stated that it “appreciates the information submitted but it does not alter my opinion.” (*Id.*)

In *Tammie D. Jimenez*, 13 CCHR 81, 84 (2008), the ALJ remanded to the WCD because the WCD had “failed to offer any explanation or rationale for reaching contradictory conclusions in two orders addressing the same parties, the same issues and the same evidence.”

Similarly, here, I cannot determine from the WCD’s October 22, 2012 letter: 1) whether it formally admitted and considered the new information in claimant’s October 17, 2012 submission, and, if so, 2) why the new information did not alter the opinion. (Ex. 129). Therefore, I find that the WCD’s decision below did not “articulate the reasoning that leads from the facts found to the conclusions drawn” and is not supported by substantial reason. *See Walker, McDowell*, supra.

IT IS THEREFORE ORDERED that this matter is remanded to the WCD/Medical Section for further review and explanation consistent with this Order and issuance of a final order.¹

¹ Because this is not technically a “final order,” no appeal rights attach to the Order. *See Blake Jackson*, 17 CCHR at 84..