
In the Matter of the Compensation
DENA L. BURIAN, Claimant
WCB Case No. 01-02266
ORDER ON REVIEW
Kryger et al, Claimant Attorneys
Alice M Bartelt, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Lowell and Phillips Polich.

The SAIF Corporation requests review of those portions of Administrative Law Judge (ALJ) Myzak's order that: (1) set aside its *de facto* denial of claimant's right carpal tunnel syndrome condition; and (2) directed processing of the claim to include payment of temporary disability. In her respondent's brief, claimant contests that portion of the ALJ's order that found that she had not perfected an aggravation claim. On review, the issues are compensability, temporary disability and aggravation. We reverse in part and affirm in part.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact."

CONCLUSIONS OF LAW AND OPINION

The parties proceeded to hearing on the issues of compensability of claimant's current right carpal tunnel syndrome under a prior 1996 claim and aggravation of that condition. SAIF contended that no aggravation claim was perfected. The ALJ set aside SAIF's *de facto* denial of claimant's current right carpal tunnel condition under the 1996 claim. In so doing, the ALJ determined that claimant's current right carpal tunnel condition was the same right carpal tunnel condition that was accepted in 1996. Although concluding that claimant's current right carpal tunnel condition was compensable under the 1996 claim, the ALJ also determined that an aggravation claim was not perfected and thus that compensability of an aggravation claim was not ripe for adjudication. Accordingly, the ALJ dismissed the hearing request with respect to the aggravation claim. However, the ALJ ordered SAIF to process the right carpal tunnel condition under the 1996 claim to include payment of temporary disability.

On review, SAIF contends that the ALJ incorrectly determined that claimant's current right carpal tunnel condition is the same condition it accepted in 1996 and that claimant is entitled to treatment under the 1996 claim. Moreover,

SAIF asserts that the ALJ improperly awarded temporary disability after finding that claimant had failed to perfect an aggravation claim. Claimant, on the other hand, contests the ALJ's finding that she failed to perfect an aggravation claim.

We adopt the ALJ's reasoning and conclusions regarding the compensability and aggravation issues. However, we agree with SAIF that the ALJ incorrectly directed that processing of claimant's current right carpal tunnel should include payment of temporary disability. The ALJ found, and we agree, that claimant had not perfected an aggravation claim. Because claimant was not seeking interim compensation and was not entitled to reopening of the claim under ORS 656.273(1), we find that the ALJ had no basis to direct payment of temporary disability. *See* ORS 656.273(6); ORS 656.262(4). Therefore, we reverse that part of the ALJ's order.

Claimant's attorney is entitled to an assessed fee for services on review regarding the compensability issue. ORS 656.382(2). After considering the factors set forth in OAR 438-015-0010(4) and applying them to this case, we find that a reasonable fee for claimant's attorney's services on review regarding the compensability issue is \$1,200, payable by SAIF. In reaching this conclusion, we have particularly considered the time devoted to the compensability issue (as represented by claimant's respondent's brief), the complexity of the issue, and the value of the interest involved.

ORDER

The ALJ's order dated December 31, 2001 is reversed in part and affirmed in part. That portion of the ALJ's order that awarded temporary disability is reversed. The remainder of the ALJ's order is affirmed. For services on review, claimant's attorney is awarded an assessed fee of \$1,200, to be paid by SAIF.

Entered at Salem, Oregon on January 15, 2003