
In the Matter of the Compensation of
DAVID D. BAKER, Claimant
WCB Case No. 01-03517, 01-03266, 00-09241
ORDER ON REVIEW
Cary Et Al, Claimant Attorneys
Employers Defense Counsel, Defense Attorneys

Reviewing Panel: Members Lowell and Biehl.

The insurer requests review of those portions of Administrative Law Judge (ALJ) Crumme's order that: (1) set aside its partial denials of claimant's right rotator cuff calcific tendinitis; and (2) set aside its denial of claimant's medical service claims for that condition. On review, the issue is compensability. We affirm.

FINDINGS OF FACT

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

CONCLUSIONS OF LAW AND OPINION

The ALJ found claimant's right rotator cuff calcific tendinitis compensable under claimant's 1999 accepted claim, based on evidence relating it to claimant's 1997 and 1999 accepted injuries. We agree, because Dr. Lin's persuasive opinion¹ establishes that one or both (probably both) of the work injuries caused the condition.² (Exs. 40, 41, 46, 47, 51-33-38); *See Michael C. Reddin*, 50 Van Natta 1396, 1403, n.1 (1998) (the "last injury rule" rule of proof relieves the claimant of the burden of proving medical causation as to a particular claim or employer and "it is sufficient for him to prove that his current condition is, in major part, a consequence of prior work-related injuries."); *John J. Saint*, 46 Van Natta 2224, 2226 (1994) (same).

¹ We find the contrary opinions inadequately reasoned because they do not consider *both* work injuries.

² We do not rely on the "*Kearns* presumption" aspect of the "last injury rule," because there is no responsibility issue in this case. Consequently, it does not matter that the 1997 and 1999 acceptances did not both include right shoulder conditions. Although the scope of the acceptances might affect a responsibility determination, it does not affect this case that concerns compensability.

Claimant's attorney is entitled to an assessed fee for services on review. 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 is \$1,500, payable by the insurer. In reaching this conclusion, we have particularly considered the time devoted to the case (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 January 19, 2002 is affirmed. For services on review, claimant is awarded a \$1,500 attorney fee, to be paid by the insurer.

Entered at Salem, Oregon on August 27, 2002