

In the Matter of the Compensation of
GARY W. HIGGINS, Claimant
WCB Case No. 02-08965, 02-01872
ORDER ON RECONSIDERATION
Glen J Lasken, Claimant Attorneys
Julie Masters, SAIF Legal, Defense Attorneys
Terrall & Terrall, Defense Attorneys

Reviewing Panel: Members Langer and Biehl.

On February 2, 2005, we affirmed an Administrative Law Judge's (ALJ's) order that found JELD-WEN/Pozzi Window (JELD-WEN), rather than the SAIF Corporation, responsible for claimant's current right shoulder condition. Claimant requests reconsideration, seeking an attorney fee for services on review. Based on the following reasoning, we are not statutorily authorized to grant such a request.

Entitlement to attorney fees in workers' compensation cases is governed by statute. Unless specifically authorized by statute, attorney fees may not be awarded. *Stephenson v. Meyer*, 150 Or App 300, 303 (1997); *SAIF v. Allen*, 320 Or 192, 200 (1994); *Forney v. Western States Plywood*, 297 Or 628 (1984).

The issue at hearing and on review was determination of responsibility between two carriers, which arose from the issuance of a designation of a paying agent under ORS 656.307. The authority for awarding an attorney fee, therefore, is found in ORS 656.307. Although ORS 656.307(5) provides that an ALJ may award a reasonable attorney fee if claimant appears at a proceeding under ORS 656.307 and actively and meaningfully participates through an attorney, there is no statutory authority under ORS 656.307 to award an assessed attorney fee for claimant's counsel's services on review. *See, e.g., John M. Bowhan*, 54 Van Natta 285, 288 (2002); *Lynda C. Prociw*, 46 Van Natta 1875 (1994).

Further, claimant's compensation was not at risk on review because compensability was not an issue at hearing or on review and the ALJ assigned responsibility to JELD-WEN, which, based on the "307" order, had a lower rate of temporary disability compensation (\$303.06) than claimant's temporary disability compensation under his SAIF claim (\$320.02). Therefore, claimant is also not entitled to an assessed fee for services on review under ORS 656.382(2). *Thomas L. Hinson*, 51 Van Natta 1942, 1945 (1999); *but see Oliver E. Pritchard*, 50 Van Natta 202, 203 (1998) (where compensation was at risk due to carrier's appeal on responsibility issue, claimant's attorney entitled to assessed fee for services on review).

Accordingly, we withdraw our February 2, 2005 order. On reconsideration, as supplemented herein, we adhere to and republish our February 2, 2005 order. The parties' rights of appeal shall begin to run from the date of this order.

IT IS SO ORDERED

Entered at Salem, Oregon on February 11, 2005