In the Matter of the Compensation of
AUGUST PERRIE, Claimant
WCB Case No. 03-03655
ORDER ON REVIEW
Ransom Gilbertson Martin Et Al, Claimant Attorneys
Julie Masters, SAIF Legal Salem, Defense Attorneys
Dept Of Justice - GCD-BAS, Defense Attorneys

Reviewing Panel: Members Langer and Biehl.

The SAIF Corporation, on behalf of the employer, ALLPEO, Inc. (ALLPEO), requests review of those portions of Administrative Law Judge (ALJ) Otto's order that: (1) determined that it provided workers' compensation coverage on the date of claimant's injury; and (2) set aside its responsibility denial of claimant's left index finger injury claim. On review, the issue is coverage.

We adopt and affirm the ALJ's order with the following supplementation.

Applying ORS 656.850(3),[1] the ALJ found that as insurer of a worker leasing company (ALLPEO, Inc.), SAIF was responsible for claimant's June 7, 2002 injury because ALLPEO's client, KH&P (KHP), did not have "an active guaranty contract on file with the director" during the term of its lease agreement with ALLPEO. Thus, the ALJ found that, when claimant was injured, coverage under the statute reverted back to SAIF, as the leasing company's insurer.

On review, SAIF challenges the ALJ's finding that KHP did not have an active guaranty contract on file during the term of the leasing agreement. Appearing in this proceeding pursuant to ORS 656.726(4)(h), the Workers' Compensation Division (WCD) supports SAIF's position that it is not responsible for claimant's injury. We agree with the ALJ's decision.

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[1] That statute provides, in relevant part:

> "When a worker leasing company provides workers to a client, the worker leasing company shall satisfy the requirements of ORS 656.017 and 656.407 and provide workers' compensation coverage for those workers and any subject workers employed by the client unless during the term of the lease arrangement the client has an active guaranty contract on file with the director that extends coverage to subject workers employed by the client and any workers leased by the client * * *."

This claim is almost factually and procedurally identical to *Mark L. Ebensteiner*, 57 Van Natta 1401, *on recon* 57 Van Natta 2446 (2005), except that the date of injury in that case was June 17, 2002. Both cases were consolidated for hearing.[2] In *Ebensteiner*, we affirmed the ALJ's order that found that SAIF was responsible for the claimant's June 17, 2002 injury because there was no "active" guaranty contract "on file" during the term of the leasing agreement between KHP and ALLPEO so as to relieve SAIF of responsibility for the claimant's injury.

Given our decision in *Ebensteiner*, we likewise conclude that SAIF is responsible for claimant's June 7, 2002 injury in this case. Accordingly, we affirm.

Claimant's attorney is entitled to an assessed fee for services on review. ORS 656.382(2). SAIF objects to the requested fee of $2,500, asserting that it is excessive.

In deciding whether the requested fee is appropriate, we consider the factors in OAR 438-015-0010(4), which include time devoted to the case, the complexity of the issues, the value of the interest involved, the skill of the attorneys, the nature of the proceedings, the benefits secured, and the risk that an attorney's efforts may go uncompensated. *See Schoch v. Leupold & Stevens*, 325 Or 112, 118-19 (1997) (Board must explain rationale for the attorney fee award).

Here, claimant submitted a two-page respondent's brief on the coverage issue and represents that he devoted six hours to the case on review. As compared to cases typically litigated before this forum, the issue here was of above average complexity. Because we have found SAIF responsible for claimant's injury claim, he is entitled to workers' compensation benefits, and the interest involved and the benefits secured for claimant are substantial. The attorneys involved in this matter are skilled litigators with extensive experience in worker's compensation law. Finally, considering the legal issues this claim presented, there was a risk that claimant's counsel's efforts might have gone uncompensated. No frivolous issues or defenses have been presented on review.

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 coverage issue is $1,500, payable by SAIF. In

[2] After the hearing, the ALJ severed the cases and issued separate orders.

reaching this conclusion, we have particularly considered the time devoted to the coverage issue (as represented by claimant's respondent's brief, his counsel's representations, and SAIF's objections), the complexity of the issue, the value of the interest involved, and the risk that claimant's counsel might go uncompensated.

ORDER

The ALJ's order dated October 18, 2004 is affirmed. For services on review, claimant's attorney is awarded an assessed fee of $1,500, to be paid by SAIF.

Entered at Salem, Oregon on September 21, 2005