

In the Matter of the Compensation of
JAMES A. KARLAS, Claimant

WCB Case No. 02-02031

ORDER OF DISMISSAL

Strooband & Ousey PC, Claimant Attorneys
Reinisch Mackenzie PC, Defense Attorneys

Reviewing Panel: Members Lowell and Weddell.

Claimant requested review of Administrative Law Judge (ALJ) Bloom's order that: (1) upheld the self-insured employer's denial of his new or omitted medical conditions claim for low back conditions; (2) upheld the employer's denial of his low back aggravation claim; (3) upheld the employer's denial of his consequential condition claim for a mental disorder; and (4) determined that claimant's medical services claim for "DRX" therapy was not compensable. The parties have submitted a proposed "Disputed Claim Settlement and Stipulation" (DCS) that is designed to resolve all issues raised or raisable between them in this case, as well as those pending before us in WCB Case No. 06-04974. This date, we have approved those portions of the parties' agreement that pertain to that case.

Pursuant to the agreement, claimant agrees the employer's denials are "affirmed in all respects and become final." Claimant further agrees that the ALJ's order is "affirmed in all respects and becomes final."

By this order, we approve the parties' settlement, thereby fully and finally resolving their dispute.¹ Accordingly, this matter is dismissed.²

IT IS SO ORDERED.

Entered at Salem, Oregon on May 28, 2008

¹ A provision in the parties' settlement states that a portion of claimant's share of the proceeds shall be applied to a "Medicare Lien." As the parties' compensability dispute is being resolved by means of a DCS, only medical service providers may be directly reimbursed from the settlement proceeds. ORS 656.313(4)(c). (Health insurance providers may be directly reimbursed by the workers' compensation carrier if "the services are determined to be compensable." ORS 656.313(4)(b)). Nonetheless, because proceeds from a DCS are not considered "compensation," claimant's assignment of all or a portion of his share of the proceeds is not prohibited by ORS 656.234. *Wanda D. Gangle*, 55 Van Natta 3655 (2003); *Robert D. Surina*, 40 Van Natta 1855 (1988). Therefore, in granting our approval of the settlement, we have interpreted the agreement as providing that claimant has assigned a portion of his share of the settlement proceeds to satisfy a medicare lien. Such an assignment is not prohibited.

² The parties' agreement provides that, from the proceeds of the settlement, claimant agrees to deposit a sum in a "medicare set-aside account" from which to pay future medical expenses. As previously noted, because DCS proceeds are not compensation, such a provision is not prohibited by ORS 656.234. Moreover, even if such proceeds were "compensation," a "medicare set-aside" provision does not constitute an invalid assignment of compensation. See *David J. Willardson*, 58 Van Natta 522 (2006) (approving "medicare set-aside" provision in a Claim Disposition Agreement (CDA)).