

In the Matter of the Compensation of
CHRISTOPHER J. CAMARENA, Claimant

Own Motion No. 12-0026M

SECOND OWN MOTION ORDER ON RECONSIDERATION

Philip H Garrow, Claimant Attorneys

Holly O'Dell, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Biehl, Langer, and Herman. Member Langer dissents.

The SAIF Corporation requests reconsideration of that portion of our August 13, 2012 Own Motion Order on Reconsideration that awarded a carrier-paid attorney fee under ORS 656.382(2) for claimant's counsel's services on reconsideration. Relying on *Donald L. Woodman*, 45 Van Natta 4 (1993), and *Tony E. Alfano*, 45 Van Natta 205 (1993), SAIF argues that ORS 656.382(2) does not allow a carrier-paid attorney fee in cases brought under our Own Motion authority. Based on the following reasoning, we disagree.

In *Antonio L. Martinez*, 61 Van Natta 1892 (2009), after analyzing the statutory language of ORS 656.382(2) under the precepts of *State v. Gaines*, 346 Or 160, 171 (2009), we concluded that the text, context, and legislative history of that statute do not permit a carrier to initiate requests for review, by way of motions for reconsideration or any other manner, and yet deny a claimant an attorney fee where, after considering the carrier's request, we determine that compensation should not be disallowed or reduced. Thus, we found that attorney fees under ORS 656.382(2) are available for any carrier-initiated "request for review," not just a review "of an [Administrative Law Judge's] ALJ's order." 61 Van Natta at 1902.

In *Martinez*, we acknowledged that *Woodman*, an Own Motion case, suggested a different result. Initially, we distinguished *Woodman*, noting that Own Motion claims have unique procedural mechanisms. However, we also reasoned that *Woodman* did not engage in any meaningful discussion of the statutory terms in finding that a claimant was not entitled to an ORS 656.382(2) attorney fee because the carrier's direct petition to the Board was not an appeal "of an ALJ's order." Ultimately, following our *Gaines* analysis, we determined in *Martinez* that the phrase "request for review," as used in ORS 656.382(2), encompassed a broader range of "review" than merely a review "of an ALJ's order," and included a carrier's request for review of our own orders. Accordingly, we disavowed any holding to the contrary, expressly citing *Woodman*.

Here, SAIF relies on *Woodman*, as well as its progeny (*Alfano*). Yet, as discussed above, the *Woodman* holding has been disavowed. Consequently, we continue to find that claimant's counsel is entitled to a carrier-paid fee award under ORS 656.382(2).

Accordingly, we withdraw our June 15, 2012 order, as reconsidered on August 13, 2012. On reconsideration, we adhere to and republish those orders, as supplemented herein. The parties' rights of appeal shall begin to run from the date of this order.

IT IS SO ORDERED.

Entered at Salem, Oregon on September 7, 2012

Member Langer dissenting.

For the reasons expressed in my previous dissents, I continue to find that the record does not establish that claimant required "other curative treatment" for the "post-aggravation rights" new/omitted medical condition ("mid back strain"). Therefore, because I would find that claimant has not prevailed on this claim, his attorney would not be entitled to a fee.