

In the Matter of the Compensation of
JAMES F. NEILS, Claimant
WCB Case No. 13-00203
ORDER ON REVIEW
J Michael Casey, Claimant Attorneys
Gilroy Law Firm, Defense Attorneys

Reviewing Panel: Members Langer and Weddell.

The self-insured employer requests review of Administrative Law Judge (ALJ) Pardington's order that awarded a \$2,500 attorney fee under ORS 656.386(1) for a rescission of its denial of claimant's new/omitted medical condition claim for "partial tear of the supraspinatus right shoulder." In his respondent's brief, claimant seeks an increased attorney fee award, as well as an attorney fee under ORS 656.382(2). On review, the issue is attorney fees.

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

Claimant also seeks an attorney fee award under ORS 656.382(2) for his counsel's services on review concerning the employer's appeal of the ALJ's attorney fee award. In doing so, claimant contends that *Dotson v. Bohemia, Inc.*, 80 Or App 233, *rev den*, 302 Or 35 (1986), was erroneously decided. Based on the following reasoning, we disagree with that contention.

In *Cayton v. Safelite Glass Corp.*, 257 Or App 188, 195 (2013), the court reiterated the *Dotson* holding under the current statutory scheme, explaining that it is well settled that penalties and attorney fees are not "compensation," and that attorney fees are not awarded for prevailing on an issue of penalties and attorney fees. *See also Anthony Lopez*, 65 Van Natta 1912, 1917 n 8 (2013). Consequently, in accordance with the aforementioned rationale, claimant's counsel is not entitled to an attorney fee award for services on review devoted to the attorney fee issue. *Dotson*, 80 Or App at 236.

ORDER

The ALJ's order dated May 2, 2013 is affirmed.

Entered at Salem, Oregon on October 30, 2013