In the Matter of the Compensation of
JOHN G. ADAMS, Claimant
WCB Case No. 13-04868
ORDER ON REVIEW
Black Chapman et al, Claimant Attorneys
Gress & Clark LLC, Defense Attorneys

Reviewing Panel: Members Weddell and Lowell.

Claimant requests review of Administrative Law Judge (ALJ) Smith's order that did not award an assessed attorney fee. On review, the issue is attorney fees.

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

Claimant sustained multiple compensable injuries when he fell in April 2008. In August 2012, Dr. Denard requested authorization of left shoulder surgery, which the self-insured employer declined to grant on the ground that the proposed procedure was not for an accepted condition.

Claimant challenged the employer's decision before the Workers' Compensation Division (WCD). The dispute was transferred to the Hearings Division to determine whether the proposed surgical procedure was causally related to the accepted conditions.

In a March 21, 2013 order, this ALJ determined that claimant had established the required causal relationship between the proposed surgery and the compensable injury. The ALJ, however, declined to award claimant's counsel an assessed attorney fee under ORS 656.386(1), reasoning that claimant had not yet prevailed on the medical services claim because a "propriety" dispute was still pending before the WCD. That order was not appealed.

On September 10, 2013, the WCD's Medical Resolution Team (MRT) determined that the proposed surgery was appropriate treatment and awarded an assessed attorney fee under ORS 656.385. Claimant's attorney then submitted a motion to the ALJ, requesting an assessed fee under ORS 656.386(1) for services performed with regard to the previous hearing.

The ALJ denied claimant's motion, reasoning that, because the prior order had become final, the Hearings Division lacked jurisdiction to award an assessed fee. On review, citing *Joseph Federico, Jr.*, 64 Van Natta 2076 (2012), claimant contends that the ALJ's March 2013 order was not "final." Therefore, he asserts that the ALJ had jurisdiction to award an assessed fee under ORS 656.386(1). For the following reasons, we disagree.

In *Federico*, we dismissed the claimant's request for Board review of an ALJ's order. In doing so, we noted that the ALJ's order neither finally disposed of, nor allowed, the claim. Moreover, the order did not fix the amount of the claimant's compensation. We further noted that, as a result of the ALJ's order, further proceedings before the Hearings Division would be required. Under those circumstances, we concluded that the ALJ's order was not a "final" order. 64 Van Natta at 2077.

By contrast, in this case, the ALJ's March 2013 order resolved the only issue before the Hearings Division, which pertained to the causal relationship between the proposed medical services and the compensable injury. Unlike the ALJ's order in *Federico*, which was interim in nature, the ALJ's March 2013 order, here, finally disposed of the causation issue. Thus, no further proceedings before the Hearings Division were required.

We acknowledge that the ALJ's prior order neglected to award a "contingent" attorney fee. *See Antonio L. Martinez*, 58 Van Natta 1814 (2006), *aff'd*, *SAIF v. Martinez*, 219 Or App 182 (2008) (awarding "contingent" attorney fee where the claimant prevailed over that portion of the medical services denial that was before the Board, but not over that portion of the medical services denial that was before WCD); *see also Nathaniel D. Erdkamp*, 63 Van Natta 2325, 2329 (2011) (the ALJ properly awarded a "contingent" attorney fee under ORS 656.386(1), payable if the claimant finally prevailed in the medical services dispute before WCD). Nonetheless, considering that omission, claimant's remedy was either to request reconsideration of the ALJ's decision before expiration of the 30-day appeal period or to timely request Board review of the ALJ's decision, seeking a "contingent" attorney fee award.

Because claimant did not take either action in a timely manner, the ALJ's previous order (without a "contingent" attorney fee award) became final. Consequently, the ALJ had no authority to alter the outcome of that final order.

Accordingly, we conclude that the ALJ properly declined claimant's request for an assessed attorney fee because the March 2013 order was "final." Therefore, we affirm.

ORDER

The ALJ's order dated November 21, 2013 is affirmed.

Entered at Salem, Oregon on May 7, 2014