
In the Matter of the Compensation of
ROBERT SALAZAR, Claimant
WCB Case No. 13-00943
ORDER ON REVIEW
Scott M McNutt Jr, Claimant Attorneys
Reinisch Wilson Weier, Defense Attorneys

Reviewing Panel: Members Johnson and Lanning.

Claimant requests review of those portions of Administrative Law Judge (ALJ) Dougherty's order that found that disputed medical services claims for claimant's low back and cervical injections were not compensable. On review, the issue is medical services.¹ We reverse.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact."

CONCLUSIONS OF LAW AND OPINION

The specific issue on review concerns the compensability of injections for lumbar radiculitis performed on August 26 and September 1, 2011 and an injection for cervical radicular pain administered on August 1, 2011. The ALJ reasoned that prior litigation before the Hearings Division and before the Board had upheld the denials of the conditions for which the injections had been provided. Thus, the ALJ determined that medical services for those conditions were not compensable. Based on the following reasoning, we reverse that determination.

ORS 656.245(1)(a) provides:

“For every compensable injury, the insurer or the self-insured employer shall cause to be provided medical services for conditions caused in material part by the injury for such period as the nature of the injury or the process of the recovery requires, subject to the limitations in ORS 656.225, including such medical

¹ Claimant has submitted an additional document on review and requests remand to the ALJ for consideration of this evidence. We need not decide this issue because we find the disputed medical services compensable based on the record as developed at the hearing.

services as may be required after a determination of permanent disability. In addition, for consequential and combined conditions described in ORS 656.005(7), the insurer or the self-insured employer shall cause to be provided only those medical services directed to medical conditions caused in major part by the injury.”

First, with regard to the lumbar spine injections for radiculitis, we acknowledge that a prior ALJ upheld denials of new/omitted medical conditions claim for various conditions and that we affirmed that decision. However, based on our review of the prior ALJ’s order, we conclude that the conditions were limited to the cervical spine. (Ex. 134-2). Thus, no lumbar spine conditions were involved in the earlier litigation.

Dr. Kane, claimant’s attending physician, testified that, until October 4, 2011, all treatment was work-related. (Ex. 125-10). Given that the employer accepted a lumbar spine condition and there were no denied *lumbar spine* conditions in the previous litigation, we conclude that Dr. Kane’s opinion establishes that the two lumbar spine injections given before October 4, 2011 are compensable.

The employer argues that no medical evidence sufficiently links the injections to the accepted lumbar and sacrum strains. However, this argument is unavailing in light of *SAIF v. Carlos-Macias*, 262 Or App 629, 637 (2014) (a decision issued after the ALJ’s order), where the court held that medical services need only be linked to the work injury, rather than to an accepted condition. Given Dr. Kane’s opinion, we conclude that the lumbar spine injections are materially related to the work injury and are, therefore, compensable. ORS 656.245(1)(a); *Mize v. Comcast Corp-AT&T Broadband*, 208 Or App 563, 569-70 (2006). Accordingly, we reverse that portion of the ALJ’s order that found that the claimed lumbar spine injections were not compensable.

Turning to the August 1, 2011 cervical spine injection, Dr. Bergquist, an examining physician, opined that preexisting degenerative disc disease combined with a cervical strain resulting from the January 2011 work incident, but that as of April 12, 2011, the strain/work injury was no longer the major contributing cause of claimant’s disability or need for treatment. (Ex. 109-8). Dr. Kane concurred with that opinion with the following exception: the January 2011 injury caused a temporary inflammation of the C6-7 nerve root resulting in temporary radiculitis. That condition became medically stationary on September 21, 2011. (Ex. 113-2).

Therefore, according to Dr. Kane, the attending physician, claimant's radicular complaints were attributable to a combined cervical condition. While the employer eventually denied the combined cervical condition effective May 8, 2012, and the prior ALJ upheld that denial, the cervical spine injection was performed before the effective date of the combined condition denial. Therefore, that denial does not affect the compensability of the August 2011 treatment.

Based on Dr. Kane's opinion, we find that the August 2011 cervical spine injection was directed to a medical condition caused in major part by the work injury. Thus, we reverse that portion of the ALJ's order that determined that the medical service was not compensable.²

Claimant's attorney is entitled to an assessed fee for services at hearing and on review related to these disputed medical services. ORS 656.386(1). After considering the factors set forth in OAR 438-015-0010(4) and applying them to this case, we find a reasonable fee for claimant's attorney's services at hearing and on review related to these disputed services is \$1,000, payable by the employer.³ In reaching this conclusion, we have particularly considered the time devoted to the issues (as represented by the record and claimant's counsel's written closing arguments at the hearing),⁴ the complexity of the issues, the value of the interest involved, and the risk that claimant's counsel might go uncompensated.

Finally, claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denied medical services, to be paid by the employer. *See* ORS 656.386(2); OAR 438-015-00129; *Nina Schmidt*, 60 Van Natta 169 (2008); *Barbara Lee*, 60 Van Natta 1, *recons*, 60 Van Natta 139 (2008). The procedure for recovering this award, if any, is prescribed in OAR 438-015-0019(3).

² In doing so, we acknowledge that the cervical radiculitis, the denial of which was upheld in the earlier ALJ's order, is not independently compensable. Nevertheless, the employer's denial does not preclude the cervical spine injection from being compensably related to the work injury during the period in which the combined cervical condition was still compensable.

³ This award is in addition to the \$6,500 employer-paid fee granted by the ALJ's order for services at the hearing level regarding other disputed medical services.

⁴ Claimant relied on those "hearing" arguments for purposes of review.

ORDER

The ALJ's order dated December 23, 2013 is reversed in part and affirmed in part. The disputed low back and cervical injections are compensable and those medical service claims are remanded to the employer for processing in accordance with law. For services at hearing and on review relating to these disputed services, claimant's attorney is awarded an assessed fee of \$1,000, payable by the employer. Claimant is awarded reasonable expenses and costs for records, expert opinion, and witness fees, if any, incurred in finally prevailing over the denials, to be paid by the employer. The remainder of the ALJ's order is affirmed.

Entered at Salem, Oregon on September 3, 2014