
In the Matter of the Compensation of
GREGORY S. SUNDEEN, Claimant
WCB Case No. 15-02979
ORDER ON REVIEW
Unrepresented Claimant
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Weddell and Curey.

Claimant, *pro se*, requests review of Administrative Law Judge (ALJ) Naugle's order that: (1) declined to award temporary disability benefits; and (2) declined to award a penalty and attorney fee for SAIF's allegedly unreasonable claim processing.¹ On review, the issues are temporary disability, penalties, and attorney fees.

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

Claimant seeks temporary disability benefits under his claim, which has been accepted as nondisabling right lateral epicondylitis and right medial epicondylitis. (Ex. 10).

When a claimant requests a hearing seeking temporary disability on an accepted nondisabling claim, an ALJ has jurisdiction to consider the request. *Lyle R. Bakke*, 59 Van Natta 988, 990 (2007). However, an ALJ has jurisdiction to consider a challenge to a nondisabling claim classification only after a Director's reclassification order. *See* ORS 656.277(1). Furthermore, because an award of temporary disability on a nondisabling claim would create a potential administrative overpayment, an ALJ lacks authority to grant such an award. *Debra S. Atlee*, 58 Van Natta 3136, 3138 (2006), *recons.*, 59 Van Natta 412 (2007); *Alfredo Martinez*, 49 Van Natta 67, 68 (1997) (temporary disability a "matter concerning a claim" over which the Hearings Division has original jurisdiction, even if a request

¹ Because claimant is not represented, he may wish to consult the Ombudsman for Injured Workers. He may contact the Ombudsman, free of charge, at 1-800-927-1271, or write to:

OMBUDSMAN FOR INJURED WORKERS
DEPT OF CONSUMER & BUSINESS SERVICES
PO BOX 14480
SALEM, OR 97309-0405

for such an award cannot be granted); *see also Lebanon Plywood v. Seiber*, 113 Or App 651 (2003) (Board had no authority to award temporary disability for a nondisabling claim because doing so would have created an overpayment).

Here, because claimant's claim has been accepted as nondisabling, and that classification has not been challenged before the Director, we lack the authority to award temporary disability benefits. *See Craig A. Elmore*, 65 Van Natta 81, 84 (2013).

Accordingly, we are not authorized to grant claimant's request for additional temporary disability benefits. Consequently, based on the aforementioned reasoning, in addition to that expressed in the ALJ's order, we affirm.

ORDER

The ALJ's order dated February 12, 2016 is affirmed.

Entered at Salem, Oregon on August 4, 2016