Workers' Compensation Board

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News & Case Notes

BOARD NEWS

Board Meeting - Discussion of Potential Rule Concepts/"Cost Bill" Survey Results

A Board meeting has been scheduled for February 15, 2018, at the Board's Salem office. The meeting, which will be held at 10 a.m., will include consideration of the following matters:

- A rule concept (from the Oregon State Bar's Access to Justice Committee), which concerns the translation of "non-English" written evidence at hearing.
- A rule concept (from the Oregon State Bar's Access to Justice Committee), which would require that certain documents be distributed to injured workers along with a separate notice in multiple languages advising them of the importance of the documents and possible avenues for assistance.
- Discussion of public comments received in response to a March 2017 survey seeking comments regarding the Board's cost bill procedures (OAR 438-015-0019).

More information about the meeting can be found on the Board's website at http://www.oregon.gov/wcb/Pages/meetings-minutes.aspx.

New Location For Ontario Hearings

The Board is moving its Ontario hearings to the Four Rivers Cultural Center at 676 SW 5th Ave. in Ontario, beginning on March 1, 2018. Four Rivers Map

Hearing notices for cases set in Ontario will include the new facility address. Please review your notices carefully.

The Four Rivers facility is equipped with multiple conference rooms, spacious common areas, and has parking with handicapped access close to the building. The center also includes multiple areas for witnesses to wait, and for attorneys to confer with clients.

"We are happy to be holding hearings in an improved facility for our stakeholders in Eastern Oregon," said Presiding Administrative Law Judge Joy Dougherty. "We spent a lot of time researching the area and viewing facilities before deciding on this one. We're committed to providing great access for our stakeholders in the area."

APPELLATE DECISIONS

Email Communications From WCB

WCB has enabled stakeholders to receive litigation filings, hearing transcripts, and other official announcements via email. The programs are not fully integrated yet, so we encourage firms to regularly check on your list of contact persons, and make sure that your email program is not inadvertently filtering out communications from WCB.

- WCB Portal - Your list of employees who receive notifications is found in your Contacts tab under "Contact List." The menu of notifications for each person is found in the Contact Detail. If you suspect a problem in your email delivery, you can access prior portal emails in the Contact History tab, where we have stored those notifications. Your account administrator can make changes to your portal account, or you can contact us at portal.wcb@oregon.gov for assistance.

- E-Transcript - This program enables you to receive electronic copies of hearing transcript(s) by email, along with the briefing schedule and exhibit list. Participants in this program (which numbers approximately 85 percent of the practitioners appearing before the Board) receive immediate notification of the briefing schedule along with direct access to the transcripts, which can be useful for brief drafting purposes. This program is separate from the WCB Portal. The Board maintains a master list of contacts for each firm participating in the e-transcript program. We recommend that participants provide us with more than one email address for these notifications to prevent any missed deadlines. You can have as many email addresses as you want to receive the e-transcript notifications. Contact us at 503-934-0103 for more information. (Please note that Board orders and notices of extensions of time are currently distributed via USPS mail.)

- GovDelivery - This is a service in which you can sign up to receive a variety of official announcements and publications via email from WCB and the Workers' Compensation Division (WCD). https://public.govdelivery.com/accounts/ORDCBS/subscriber/new?preferences=true#tab1

In the portal and e-transcript programs, WCB will generally get notification if an email delivery is "undeliverable," and will follow-up to ensure notifications are getting through to the correct people. However, WCB has no ability to verify that email communications are getting through practitioner's private spam filters. Here are some tips on avoiding email problems:

Verify your Email: If your email address has been entered incorrectly you will not receive the notifications.

Add Support Staff Members to the E-Transcript Program: There is no limit to the number of email addresses that can receive emails from the e-transcript program. To add or change recipients, notify us at 503-934-0103.

Check Contact History in the Portal: Review whether a notification was sent to you in the "Contact History" link under the "Contacts" tab. This "history" lists all notifications sent to the user's designated contacts.

Firm Notifications vs. Person Notifications in the Portal: Verify whether you are designated to receive a specific attorney's notifications. To edit this "designation notification," uncheck the box that states "Notify me of cases I am directly involved in." This will ensure that you will receive all notifications.

More than One Contact: If a registered portal user has more than one contact, confirm that all the above measures are reviewed for each individual contact.

Always Accept Email from the Portal and WCB: Add the email addresses from the WCB E-Transcript Program (Etranscript.WCB@oregon.gov) and the WCB Portal (Portal.WCB@oregon.gov) to your contacts or "safe" email addresses. This action should ensure that spam filters or other email rules will not block email notifications from WCB.

Check Your Firewall/Spam Filter/Email Settings: Below is a list of articles regarding spam filters for popular email providers. These articles vary in difficulty but are a first step for users who are having "email notification" issues. This list is a compilation of major email providers as well as some others.

Comcast - http://customer.comcast.com/help-and-support/internet/spam-filters-and-email-blocking/
Yahoo - https://help.yahoo.com/kb/mail/check-filters-sln5075.html
(Google) Gmail - https://support.google.com/a/answer/2368132?hl=en
Outlook - https://support.office.com/en-us/article/change-the-level-of-protection-in-the-junk-email-filter-e89c12d8-9d61-4320-8c57-d982c8d52f6b
CenturyLink (Qwest) - http://www.centurylink.com/help/index.php?assetid=130

If your email provider is not listed here, it is recommended that you contact your Internet Service Provider (ISP) to assist you further.

Reminder - Please Use New Request for Hearing Form

The Board updated its Request for Hearing form in 2016, but some practitioners are still using the previous version of the form when filing a request for hearing. The new form, which greatly assists in accurate processing of hearing requests, is available as a .PDF or Word document on the Board's website at: http://www.oregon.gov/wcb/hearings/Pages/hrg-forms.aspx.

CASE NOTES

Claim Processing: Partially Prospective "Medical Service" Denial - Denied Treatment "On and After" a Specific Date - Partially Invalid

Michael A. Norris, 70 Van Natta 65 (January 22, 2018). The Board held that a carrier's denial of claimant's current medical treatment for his shoulder condition "on and after" a specific date was a partially invalid "prospective"

Carrier issued a "current condition" partial denial for medical services "on and after" a specified date.

denial of future medical treatment because it purported to deny medical treatment beyond the date of the denial. In response to claimant's attending physician's recommendation for additional treatment for claimant's shoulder condition, the carrier issued a "current condition partial denial" of his medical treatment "on and after" a specific date, asserting that the current need for treatment was not related in major part to his compensable injury. Claimant requested a hearing, contending that the carrier's denial constituted an invalid "prospective" denial of his future benefits related to his compensable injury or, alternatively, that his medical services claim was compensable under the "material part" standard of ORS 656.245(1)(a).

The Board agreed with claimant's contentions. Citing *Green Thumb, Inc. v. Basl*, 106 Or App 98 (1991), and *Barbara J. Ferguson*, 63 Van Natta 2253 (2011), the Board stated that when a carrier issues a denial of a "current" claimed need for medical services, that denial only applies to a "current" need for treatment, and not to future benefits. Furthermore, referring to *Boise Cascade Corp. v. Hasslen*, 108 Or App 605 (1991), and *Evanite Fiber v. Striplin*, 99 Or App 353 (1989), the Board noted that a carrier may not prospectively deny its future responsibility for benefits related to the accepted compensable injury.

Insofar as denial purported to deny "post-denial' medical services, it was procedurally invalid.

Turning to the case at hand, the Board concluded that the portion of the denial referring to the carrier's receipt of recent medical bills and claimant's "current need for treatment" was a procedurally valid denial of claimant's "current need for treatment" as of the date of its issuance. Nevertheless, the Board noted that the denial also purported to deny medical treatment "on and after" a date that would extend beyond the date of the denial. Therefore, to the extent that the denial purported to deny the compensability of "post-denial" medical services for which no claim had been made, the Board set aside that portion of the denial as an invalid "prospective" denial. Concerning the procedurally valid portion of the denial (*i.e.*, medical services provided before the carrier's denial), the Board found that the unrebutted medical evidence established that the disputed medical services were for a condition caused in material part by claimant's accepted shoulder condition. *See* ORS 656.245(1)(a); *Garcia-Solis v. Farmers Ins. Co.*, 288 Or App 1, 5 (2017).

Finally, in light of the long-established case precedent prohibiting "prospective" denials of future medical benefits, the Board found that the carrier's prospective denial was unreasonable. ORS 656.262(11)(a); *Int'l Paper Co. v. Huntley*, 106 Or App 107, 110 (1991); *Brown v. Argonaut Ins. Co*., 93 Or App 588, 591 (1988); *Ferguson*, *supra*. In addition, based on claimant's physician's uncontested opinion, the Board determined that the carrier had no legitimate doubt as to its liability for the "valid" portion of the denial. Consequently, the Board awarded penalties and attorney fees under ORS 656.262(11)(a) for the carrier's unreasonable denial.

Own Motion: PPD - "278(2)(d)" Limitation Applies to "Whole Person" Permanent Impairment (Including Condition Without Prior PPD Award)

Sandra L. Liske, 70 Van Natta 102 (January 24, 2018). Applying ORS 656.278(2)(d), the Board held that the statutory limitation concerning the calculation of claimant's permanent impairment award from an Own Motion Notice of Closure (NOC) applied to her combined whole person impairment award for a "post-aggravation rights" new/omitted medical condition involving the cervical spine and right arm as a medical sequela, even though she had not previously received an award for her right arm and a redetermination of that body part was not required under the Director's standards. Prior to the expiration of her aggravation rights, claimant had been awarded 15 percent whole person impairment for an accepted cervical spine condition (and no work disability). After the reopening of claimant's Own Motion claim for cervical strain combined with degenerative disc disease and prior fusion at C5-6 and C6-7 and chronic C6-7 radiculopathy, a NOC did not award additional permanent impairment. Claimant requested Board review of the NOC, seeking increased whole person impairment, including a "chronic condition" impairment value for the right arm related to the cervical radiculopathy.

After reviewing a medical arbiter's report, the Board determined that claimant had sustained permanent impairment to her cervical spine and right arm. Citing *Cory L. Nielsen*, 55 Van Natta 3199, 3206 (2003), the Board explained that ORS 656.278(2)(d) applies to limit any permanent disability award for a "post-aggravation rights" new/omitted medical condition where there is (1) "additional impairment" to (2) "an injured body part" that has (3) "previously been the basis of a permanent partial disability award."

Right arm sequela of cervical spine injury was part of current "whole person" impairment award subject to "278(2)(d)" limitations for prior award (for cervical spine).

Turning to the case at hand, the Board concluded that the limitation under ORS 656.278(2)(d) applied to claimant's permanent disability award because her "post-aggravation rights" new/omitted medical condition had resulted in additional impairment and involved the same "injured body part" (cervical spine) that was the basis for her previous 15 percent permanent disability award. In doing so, the Board acknowledged that the record also supported permanent impairment to claimant's right arm and that, because there was no prior award for that body part, there was no "redetermination" under the Director's disability standards of her right arm impairment. However, reasoning that claimant's right arm impairment was part of her current whole person impairment award (which also included additional impairment for her cervical spine that had previously been the basis of her prior permanent disability award), the Board determined that the limitation under ORS 656.278(2)(d) applied to her permanent disability award (which consisted of the combined impairment resulting from multiple body parts).

Consequently, the Board combined claimant's cervical and right arm impairment values for a total whole person impairment value. Because that total value exceeded claimant's prior whole person impairment award, the Board applied the limitation under ORS 656.278(2)(d) to that total value and granted claimant the remainder as her additional whole person permanent impairment award.

Own Motion: Claimant's Affidavit Included With "Post-Arbiter" Brief - Timely Submitted Under "012-0060(4)"

Because briefing schedule was deferred pending receipt of arbiter report, submission of affidavit with claimant's opening argument was timely under "012-0060(4)."

Sandra C. Oviedo, 70 Van Natta 45 (2018). Applying OAR 438-012-0060(4), the Board considered claimant's affidavit concerning her appeal of an Own Motion Notice of Closure (NOC) because the affidavit was included with her opening argument following the implementation of a "post-arbiter report" supplemental briefing schedule. In response to the carrier's objection to the affidavit, the Board acknowledged that, under OAR 438-012-0060(4), a claimant may submit additional evidence within 21 days of the carrier's submission of the record. However, noting that it had deferred the briefing schedule until a medical arbiter report was received, the Board concluded that claimant's affidavit (which was included with her timely submitted "post-medical arbiter report" written argument and which the carrier had an opportunity to respond to) complied with OAR 438-012-0060(4). Accordingly, the Board denied the carrier's motion to exclude the affidavit, and considered the affidavit in determining claimant's social-vocational factors and entitlement to a permanent disability award.

Reconsideration Proceeding: "268(5)(e)"/ "ORS 656.214(2)(b)"/"035-0007(2)" - Carrier "Recon" Request of "NOC" - Limited to "Impairment" - Reduction of "Impairment" Necessarily Resulted in Reduction of "Work Disability" Award

Claimant contended work disability award should be reinstated because carrier was prohibited from challenging it before ARU.

Zachary J. McEntire, 70 Van Natta 27 (2018) (January 16, 2018). Applying ORS 656.268(5)(e), ORS 656.214(2)(b), and OAR 436-035-0007(2) the Board held that, although a carrier was not authorized to raise work disability as an issue when it had requested reconsideration of a Notice of Closure (NOC), the subsequent reduction in claimant's permanent impairment findings necessarily reduced the work disability award calculation. After the attending physician concurred with a Work Capacities Evaluation (WCE) that declared claimant was not capable of regular work, the carrier issued a NOC that awarded permanent impairment and work disability. The carrier requested reconsideration of the NOC, disputing claimant's permanent impairment findings and requesting a medical arbiter examination. Based on the medical arbiter's report, an Order on Reconsideration reduced claimant's permanent disability awards. Claimant requested a hearing, contending (among other issues) that his work disability award (as granted by the NOC) should be reinstated because the carrier was prohibited from challenging his work disability award under ORS 656.268(5)(e). In response, the carrier asserted that claimant's work disability award was reducible based on his diminished permanent impairment award.

The Board agreed with the carrier's contention. Citing ORS 656.268(5)(e), the Board stated that a carrier's reconsideration request is limited to challenging a claimant's permanent impairment findings. However, relying on ORS 656.214(2)(b) and OAR 436-035-0007(2), the Board noted that the calculation of a work disability award includes an "impairment value"/"award for impairment."

Because permanent impairment was reduced, work disability was similarly reduced because impairment is part of "work disability" calculation.

Turning to the case at hand, the Board acknowledged that, because the carrier had requested reconsideration, claimant's permanent impairment was the only issue raised by the request. Nevertheless, because the carrier's challenge to the NOC's permanent impairment award had resulted in a reduction, the Board determined that claimant's work disability award would similarly be reduced. The Board reasoned that, to do otherwise, would ignore the requirements of ORS 656.214(2) and OAR 436-035-0007(2), which mandate the consideration of a permanent impairment award in the calculation of a work disability award.

In reaching its conclusion, the Board distinguished *Jolene M. Brill*, 69 Van Natta 461 (2017), where it had reversed a "carrier-requested" Order on Reconsideration that had reduced a claimant's award based on a carrier's unsolicited evidence regarding work disability. In contrast to *Brill*, the Board reasoned that, in the present case, an Order on Reconsideration had reduced claimant's work disability award after reducing claimant's permanent impairment award. In addition, the Board reasoned that the issue in the present case (*i.e.*, whether the recalculation of a work disability award was justified when an impairment value had been modified resulting from a carrier's statutorily permissible challenge to the NOC) was neither raised nor addressed in *Brill*.

Temporary Disability: Claimant's "Modified Work" Job Withdrawn - Inclement Weather - TTD Reinstated - "268(4)," "060-0030(6)"

Discovery: Untimely Disclosure of Requested Payroll Records - Penalties/Fees Based on Compensation Award

William E. Easley, 70 Van Natta 110 (January 25, 2018). Applying OAR 436-060-0030(6), the Board held that claimant was entitled to temporary total disability (TTD) benefits because his "modified job" was effectively withdrawn by his employer due to inclement weather. After returning to a modified job with his employer following his compensable injury, claimant was sent home on two days due to rain. Thereafter, claimant requested a hearing, seeking TTD benefits for those days, asserting that the employer had withdrawn his modified job.

The Board agreed with claimant's contentions. Referring to ORS 656.268(4) and OAR 436-060-0030(6), the Board noted that temporary total disability benefits must be reinstated when an offer of modified employment is withdrawn.

Claimant arrived ready to work at modified job, but was sent home by employer due to inclement weather.

In effect, modified job was withdrawn by employer prompting reinstatement of TTD.

Turning to the case at hand, the Board found that claimant had arrived at his employer's work site, ready, willing, and able to perform his modified job, but was sent home on two days due to inclement weather. Under such circumstances, the Board determined that the employer had effectively withdrawn its modified job offer. Consequently, the Board concluded that the carrier was required to reinstate claimant's TTD benefits.

In reaching its conclusion, the Board distinguished *Robert L. Ryan*, 61 Van Natta 1939 (2009), noting that *Ryan* concerned the absence of a claimant's modified job for a regularly scheduled unpaid holiday. The Board reasoned that, in the present case, unlike in *Ryan*, claimant was scheduled, and arrived, for work on the days in question and it was undisputed that the employer's place of business was regularly closed on the days in question.

Failure to provide discovery can interfere with payment of compensation.

Finally, applying ORS 656.262(11)(a), the Board held that a penalty and penalty-related attorney fee were justified for the carrier's untimely disclosure of requested payroll records. Citing ORS 656.262(11)(a), the Board stated that, if a carrier unreasonably delays or refuses to pay compensation, attorney fees, or costs, or unreasonably delays acceptance or denial of a claim, the carrier shall be liable for a penalty plus any applicable attorney fees. Referring to OAR 438-007-0015(8), and *MaryRose K. Gangle,* 65 Van Natta 958 (2013), the Board noted that the failure to provide discovery can interfere with the payment of compensation and, if found unreasonable, may result in the imposition of penalties or attorney fees.

Because carrier untimely disclosed requested payroll records and Board awarded TTD benefits, penalties/fees justified.

Turning to the case at hand, the Board found that the carrier's disclosure of the requested payroll records was untimely and unexplained. Concluding that the carrier's conduct was unreasonable, the Board awarded a penalty (based on the TTD award), as well as a reasonable attorney fee. ORS 656.262(11)(a); *Steven D. Surber*, 56 Van Natta 2014 (2004); *c.f.*, *Dawn Turner*, 69 Van Natta 444, 449 (2017) (carrier's discovery violation did not warrant penalty and attorney fee under ORS 656.262(11)(a) when no compensation award was granted).

Worker-Requested Medical Examination: "325(1)(e)" - Carrier's Denial Erroneously Referred to IME (Rather Than "Record Review") - No Entitlement to WRME

Denial stated it was "based in part on an IME."

Lorinda L. Gauthier, 70 Van Natta 96 (January 23, 2018). Applying ORS 656.325(1)(e), the Board held that claimant was not entitled to a Worker-Requested Medical Examination (WRME) where, although the carrier's denial stated that it was based on an insurer-arranged medical examination (IME), the denial had actually been based on a physician's "record review." The carrier denied claimant's dental condition claim after a physician conducted a carrier-requested record review and concluded that the work injury was not a material contributing cause of the claimed condition. Because the carrier's denial stated that it was "based in part on an [IME]," claimant filed a WRME request with the

WCD granted WRME request, and carrier filed hearing request.

Workers' Compensation Division (WCD). After WCD granted the request, the carrier filed a hearing request, contending that claimant was not entitled to a WRME because the denial was not in fact based on an in-person examination.

The Board agreed with the carrier's contention. Citing ORS 656.325(1)(e), the Board stated that a claimant is entitled to a WRME where the carrier's denial is based on a carrier-requested medical examination under ORS 656.325(1)(a). Relying on *Denise Amos*, 65 Van Natta 2100, 2102 (2013), the Board noted that only an in-person examination, not a physician's record review, constitutes an "examination" for purposes of ORS 656.325(1)(a) and (e).

The Board acknowledged that, under *Tattoo v. Barrett Business Services*, 118 Or App 348 (1993), a carrier may be bound by the language of its denial in certain circumstances. However, relying on *Mills v. Boeing Co.*, 212 Or App 678 (2007), the Board concluded that the *Tattoo* rationale did not apply where the carrier later asserts a position that does not contradict the express wording of the denial; *i.e.*, where the claimed error in the language of the denial concerns a peripheral requirement of the denial that, when considered in context, can only have one possible meaning.

Despite denial's language, it was undisputed that there was a "record review," not an IME.

No entitlement to WRME based on a "record review" denial.

Turning to the case at hand, the Board concluded that the carrier's denial did not meet the requirements of ORS 656.325(1)(e) because, despite its language, it was undisputed that the denial was based on a record review, rather than an IME. Moreover, the Board reasoned that the *Tattoo* rationale did not apply because the erroneous language in the denial notice (*i.e.*, that it was based on an IME) concerned a peripheral aspect of the denial that could only be understood to refer to the record review. Under such circumstances, the Board held that claimant was not entitled to a WRME under ORS 656.325(1)(e).

APPELLATE DECISIONS UPDATE

Subject Worker: "Partner" - "Non-Subject Worker" - "Share in Profits" - Rebuttable Presumption of "Partnership" - "027(8)"/ "67.055(1)"

Pilling v. Travelers Insurance Company, 289 Or App 715 (January 4, 2018). Analyzing ORS 656.027(8) and ORS 67.055(1), the court affirmed the Board's order in *Mark Pilling*, 68 Van Natta 129 (2016), previously noted 35 NCN 2:13, that held that claimant was a "non-subject worker" because he was a "partner" of a business at the time of his injury (which resulted from a motor vehicle accident) and had not applied for or made an election of coverage as required by ORS 656.128(1). In reaching its conclusion that claimant was a partner in the satellite communication system business, the Board acknowledged that his wife had applied for a workers' compensation policy as a proprietorship, wishing to obtain coverage for claimant as the only employee. Nonetheless, reasoning that claimant had never received wages from the business (but rather had shared in the business's profits), the Board found that he was a "partner" of the business under ORS 67.055(4). Further determining that claimant had not applied for

Claimant had never received wages, but had shared in profits of business.

or elected coverage under ORS 656.128 (as a "non-subject partner") or ORS 656.039 (as a "non-subject worker"), the Board held that he was a "non-subject worker" and, as such, upheld the carrier's denial of his injury claim.

On appeal, claimant contended that he and his wife were not partners in the business and, therefore, was not required to apply for or elect coverage for himself, but rather he was covered as a "subject worker" as an employee of the business under its workers' compensation policy. The court identified the issue as whether substantial evidence supported the Board's finding that claimant was in a partnership (as defined by ORS 67.055(1)); *i.e.*, that he was a partner in a partnership in an "association of two or more persons to carry on as co-owners of a business for profit. Reviewing for substantial evidence and legal error under ORS 656.298(7) and ORS 183.482(8), the court affirmed the Board's decision.

Citing *Hayes v. Killinger*, 235 Or 465 (1963), and *Wirth v. Sierra Cascade, LLC*, 234 Or App 740, 764-65, *rev den*, 348 Or 669 (2010), the court reiterated that the question of what constitutes a partnership is a matter of law, but whether a partnership exists under the evidence in a record is a factual determination, unless the court can draw only one inference. Quoting ORS 67.055(4)(d), the court stated that "[i]t is a rebuttable presumption that a person who receives a share of the profits of a business is a partner in the business, unless the profits were received in payment of: * * * (B) [w]ages or other compensation to an employee or independent contractor."

Turning to the case at hand, the court acknowledged that claimant and his wife did not intend to have a partnership. Nevertheless, relying on *Wirth*, the court observed that the parties' intentions are not necessarily controlling in determining the existence of a partnership under ORS 67.055; *i.e.*, a partnership may be created unintentionally by the parties. *See* ORS 67.055(4)(a)(B) (the parties' "expression of an intent to be partners" is, instead, one of the factors to be considered by the finder of fact in determining whether persons have created a partnership).

Evidence supported Board's finding that gave rise to rebuttable presumption of partnership.

After conducting its review, the court determined that there was undisputed evidence concerning the manner in which the business was operated, particularly the parties' division and sharing of control and responsibilities (as well as their rights to share in the profits and losses). Reasoning that it was also undisputed that claimant never actually received "payment" of any kind (but rather that the parties simply used funds remaining after payment of business expenses for household expenses), the court concluded that substantial evidence supported the Board's finding that claimant shared profits (which gave rise to the rebuttable presumption that he and his wife were partners in the business.

Application for workers' compensation insurance had not included claimant as a "partner."

Finally, the court rejected claimant's alternative assertion that his wife's application for workers' compensation insurance constituted an application under ORS 656.128(1) to include him (as a partner) as a "subject worker." In doing so, the court concluded that the application (which referred to claimant as an employee) did not provide the required written notification that claimant's wife was seeking coverage for him as a "partner."

TTD: "325(5)(b)" - Termination - Claimant Not "Fired" For Violation of Work Rule

Penalty: "262(11)(a)" - Unreasonable Conversion of TTD to TPD - Employer Knowledge Imputed to Insurer

SAIF v. Hall, ___ Or App ___ (January 18, 2018). The court, *per curiam*, affirmed the Board's order in *Dustin E. Hall*, 68 Van Natta 1465, *on recon*, 68 Van Natta 1615 (2016), previously noted 35 NCN 9:6 & 10:7, that held that: (1) a carrier was not entitled to terminate claimant's temporary total disability benefits under ORS 656.325(5)(b) because the record did not establish that he had been fired for a violation of a work rule or other disciplinary reasons; and (2) imputing the employer's knowledge/conduct to the carrier in awarding penalties/attorney fees under ORS 656.262(11)(a) for unreasonable claim processing. The court cited *Nix v. SAIF*, 80 Or App 656, *rev den*, 302 Or 158 (1986), and *Anfilofieff v. SAIF*, 52 Or App 127 (1981).

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