
In the Matter of the Compensation of
KIRK P. MOORE, Claimant
WCB Case No. 03-02849, 03-00551
ORDER ON REVIEW
Malagon Moore et al, Claimant Attorneys
Johnson Nyburg & Andersen, Defense Attorneys
Radler Bohy et al, Defense Attorneys

Reviewing Panel: Members Langer and Biehl.

The self-insured employer requests review of those portions of Administrative Law Judge (ALJ) Spangler's order that: (1) set aside its denial of claimant's aggravation claim for an L5-S1 condition; and (2) assessed a penalty for allegedly unreasonable claim processing. On review, the issues are compensability, aggravation, penalties, and potentially, responsibility.

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

Persuasive medical evidence establishes that the worsening of claimant's compensable condition exceeds waxing and waning of symptoms contemplated by the previous permanent disability award as perscribed in ORS 656.273(8). (Ex. 49).

Claimant's attorney is entitled to an assessed fee for services on review regarding the compensability/aggravation issues. ORS 656.382(2). After considering the factors set forth in OAR 438-015-0010(4) and applying them to this case, we find that a reasonable fee for claimant's attorney's services on review is \$1,500, payable by the employer. In reaching this conclusion, we have particularly considered the time devoted to the issues (as represented by claimant's respondent's brief), the complexity of the issues, and the value of the interest involved.¹

ORDER

The ALJ's order dated July 11, 2003 is affirmed. For services on review, claimant's counsel is awarded a \$1,500 attorney fee, to be paid by the self-insured employer.

Entered at Salem, Oregon on December 12, 2003

¹ Claimant is not entitled to an attorney fee for services devoted to the penalty issue. *See Saxton v. SAIF*, 80 Or App 631 (1986), *rev den* 302 Or 159 (1986).