
In the Matter of the Compensation of
SANDRA BUCKSEN, Claimant
WCB Case No. 07-06489
SECOND ORDER ON RECONSIDERATION
Stebbins & Coffey, Claimant Attorneys
James B Northrop, SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

On April 21, 2010, we issued an Order on Reconsideration that supplemented and republished our January 22, 2010 order that reversed an Administrative Law Judge's (ALJ's) order that set aside the SAIF Corporation's denial of an occupational disease claim for a mental disorder. Claimant again requests reconsideration, arguing that our decision was inconsistent with our original order and the findings of the ALJ that we had previously "accepted" in our initial order.

Specifically, claimant notes the ALJ found that the 2007 work plan was unreasonable. Asserting that we accepted that finding in our initial decision, claimant argues that our reconsideration determination that the employer's disciplinary action as a whole was reasonable was "factually inconsistent" with our original order. We disagree with claimant's contentions.

In considering each case presented for review, we conduct a thorough and methodical review of the record, which necessarily includes the ALJ's order and the parties' respective written arguments on review. Pursuant to ORS 656.295(6), we may affirm, reverse, modify or supplement the ALJ's order and make such disposition of the case as we determine to be appropriate.

Here, although our original order adopted the ALJ's "Findings of Fact," we did not agree with the ALJ's reasoning and conclusions of law and reversed his ultimate decision to set aside SAIF's denial of claimant's mental disorder claim. The passage recited by claimant was contained in the ALJ's "Conclusions of Law and Opinion," and, as such, was not adopted in our initial order reversing the ALJ's decision. To the contrary, as discussed in our original order and as supplemented on reconsideration, we have consistently concluded that the employer's disciplinary actions were reasonable. Our adoption of the ALJ's findings does not conflict with our reasoning and conclusions derived from those findings. Thus, contrary to claimant's contention, there is no inconsistency between our prior decisions.

Furthermore, in concluding that the 2007 work plan was unreasonable because it resulted in over 40 hours of work for a 32-hour work week, the ALJ relied on “averages” for time spent on specific work duties. For example, the ALJ determined that claimant’s group counseling, on average, contained nine people, six times per week, which would then require 810 minutes per week to complete the group’s progress notes. However, the record indicates that, on at least one occasion, only one person attended “group” for 20 minutes (although claimant chose to bill the time as a “30 minute group”). (Exs. 2G-1, 2I-3). Thus, the ALJ’s determination that 810 minutes would be devoted to post-group note preparation would be significantly diminished in light of the actual attendance. Further, claimant’s former supervisor indicated that claimant’s case load varied from the high 20s to the low 40s. (Tr. 188). Given this significant fluctuation in claimant’s workload, we decline to rely on a mathematical computation of “averages” in gauging the reasonableness of claimant’s work plan.

In any event, as discussed in our original order and adhered to on reconsideration, our evaluation of the reasonableness of the 2007 work plan and claimant’s ability to meet those goals includes consideration of claimant’s acknowledged lateness and absenteeism, which would have diminished the amount of time she had to complete her tasks, as well as her acknowledgment that she had documentation problems and “let attitude interfere” in addressing those issues. (Exs. 2F, 2G, 2H, 2I, 2Ka, 5-9, -19).

In sum, we continue to find, for the reasons expressed in our prior orders, that the employer’s disciplinary or corrective action as a whole was reasonable, considering all of its various components (*i.e.*, the employer’s initial actions, the work plans, and the disciplinary hearing/suspension). We reiterate that in reaching our conclusion, we have analyzed each of the different components of the disciplinary/corrective action independently and do not accord them equivalent weight. As previously explained, even assuming that the employer may have acted unreasonably in the initial stages of the process (*e.g.*, issuing a reprimand for a nonexistent HIPAA violation and inappropriate remarks by a supervisor), such an assessment does not preclude us from finding that the employer’s disciplinary/corrective process as a whole was reasonable considering all the circumstances.

Consequently, we continue to conclude that the record does not establish compensability of claimant’s mental disorder claim. As such, we adhere to our prior orders that reversed the ALJ’s order.

Accordingly, we withdraw our prior orders. On reconsideration, as supplemented herein, we adhere to and republish our prior orders. The parties' rights of appeal shall begin to run from the date of this order.

IT IS SO ORDERED.

Entered at Salem, Oregon on May 19, 2010