

In the Matter of the Compensation of
JANICE E. INNOCENTI, Claimant
WCB Case No. 08-02303
ORDER ON REVIEW
Martin L Alvey, Claimant Attorneys
Radler Bohy et al, Defense Attorneys

Reviewing Panel: Members Biehl and Langer.

The self-insured employer requests review of those portions of Administrative Law Judge (ALJ) Kekauoha's order that: (1) set aside its denials of claimant's occupational disease claim for a positive purified protein derivative test (for latent tuberculosis); (2) assessed a penalty and penalty-related fee under ORS 656.262(11)(a) for the employer's allegedly unreasonable claim processing. On review, the issues are compensability, penalties and attorney fees.

We adopt and affirm the ALJ's order.

Claimant's attorney is entitled to an assessed fee for services on review. 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 \$2,500, payable by the employer. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by claimant's respondent's brief), the complexity of the issue, and the value of the interest involved.

Claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, to be paid by the employer. *See* ORS 656.386(2); OAR 438-015-0019; *Gary Gettman*, 60 Van Natta 2862 (2008). The procedure for recovering this award, if any, is prescribed in OAR 438-015-0019(3).

ORDER

The ALJ's order dated July 6, 2009 is affirmed. For services on review, claimant's attorney is awarded an assessed fee of \$2,500, payable by the employer. Claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, to be paid by the employer.

Entered at Salem, Oregon on February 17, 2010