
In the Matter of the Compensation of
CHRISTOPHER J. CAMARENA, Claimant
Own Motion No. 12-0026M
OWN MOTION ORDER ON RECONSIDERATION
Philip H Garrow, Claimant Attorneys
Holly O'Dell, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Biehl, Langer, and Herman. Member Langer dissents.

On July 13, 2012, we withdrew our June 15, 2012 order, which found that claimant was entitled to temporary disability benefits beginning August 16, 2011, concerning a reopened Own Motion claim for a “post-aggravation rights” new/omitted medical condition (“mid back strain”). We took this action to consider the SAIF Corporation’s request for reconsideration, wherein it contends that claimant’s attending physician did not authorize temporary disability benefits for curative treatment. Having received claimant’s response, we proceed with our reconsideration.

In awarding temporary disability benefits, we were persuaded that claimant received “curative treatment” for his new/omitted medical condition, and that his attending physician (Dr. Vaughn) authorized temporary disability benefits for this curative treatment. *Christopher T. Camarena*, 64 Van Natta 1129 (2012). Consequently, we granted temporary disability benefits beginning August 16, 2011, the date of Dr. Vaughn’s work release. *See* ORS 656.278(1)(b).

On reconsideration, SAIF disputes our finding that Dr. Vaughn authorized temporary disability benefits for claimant’s curative treatment.¹ Rather, it contends that temporary disability was never authorized for the curative treatment. Should we continue to find that the authorization was for the curative treatment, SAIF asks that we specify the dates during which curative treatment was prescribed, and separately specify the dates for which temporary disability was authorized for that treatment.

After further consideration of this record, we adhere to our previously expressed reasoning and conclusion. Consequently, we continue to find that the record establishes claimant’s entitlement to temporary disability benefits beginning August 16, 2011.

¹ SAIF specifically narrows the issue on reconsideration to “whether temporary disability authorized ‘for’ curative treatment,” while “preserving” its dispute over whether “curative treatment” actually occurred.

As explained in our prior order, entitlement to temporary disability benefits on this reopened Own Motion claim for a “post-aggravation rights” new/omitted medical condition is determined under ORS 656.278 and the Board’s Own Motion rules. Pursuant to ORS 656.278(1)(b), temporary disability benefits are payable from the date the attending physician authorizes temporary disability compensation “for the hospitalization, surgery or other curative treatment.” The date of authorization may be the date the requisite treatment is recommended. *See David L. Hernandez*, 56 Van Natta 2441, 2446 (2004).

Here, as we previously found, the opinions of Drs. Wagner and Vaughn support a finding that claimant’s medical care was directed toward healing claimant’s mid back condition. *Camarena*, 64 Van Natta at 1132-33. In this regard, on August 16, 2011, Dr. Vaughn found claimant’s condition not medically stationary, prescribed pain medication, muscle relaxants, and heat, and released claimant from work. (Ex. 1). Dr. Vaughn continued to prescribe physical therapy and to release claimant from work until November 11, 2011, at which time claimant was released to modified work. (Exs. 3, 5, 7).

In February 2012, Dr. Wagner found that claimant failed to respond to physical therapy, trigger point injections, and acupuncture. (Ex. 9). Following a negative SPECT scan, Drs. Wagner and Vaughn prescribed aggressive rehabilitation, with active physical therapy. (Exs. 10, 11). In addition, “both physicians noted claimant’s difficulty healing and prescribed aggressive rehabilitation, including active physical therapy, to resolve his condition.” *Id.* at n 3.²

In the absence of contrary evidence, we continue to find such comments supportive “of the proposition that the prescribed treatment was designed to heal or permanently alleviate or eliminate claimant’s medical condition.” *Id.* Likewise,

² We disagree with SAIF that claimant must have actually undergone the curative treatment to be eligible for temporary disability benefits. To the contrary, we have held that temporary disability benefits are payable from the date the attending physician authorizes temporary disability related to the hospitalization, surgery, or other curative treatment, which may be the date the requisite treatment is recommended. *See Hernandez*, 56 Van Natta at 2447; *Thurman M. Mitchell*, 56 Van Natta 1287 (2004) (temporary disability benefits payable from date surgery recommended, and attending physician authorized time loss from that date; *Cavazos* applied); *Mark A. Cavazos*, 55 Van Natta 3004, 3012-13 (2003) (the phrase “for the hospitalization, surgery or other curative treatment” does not mean that temporary disability benefits are limited to starting the date the worker actually undergoes one of the required medical treatments).

the opinions and reports of Drs. Wagner and Vaughn persuasively establish that the treatment claimant received was directed toward healing, permanently alleviating or eliminating his mid back condition.³

Thus, the record establishes that claimant required “other curative treatment.” Included within that “other curative treatment” was the treatment Dr. Vaughn prescribed on August 16, 2011, along with the other curative treatment claimant was prescribed thereafter. Moreover, Dr. Vaughn authorized temporary disability benefits coinciding with that prescribed curative treatment.

Therefore, under these particular circumstances, we find that Dr. Vaughn’s authorization for temporary disability, which first occurred on August 16, 2011, was “for the * * * other curative treatment” for claimant’s new/omitted medical condition (“mid back strain”). ORS 656.278(1)(b). We disagree with SAIF that a physician must specifically designate whether a work-release is for a certain treatment in order to satisfy ORS 656.278. Consequently, we continue to award temporary disability benefits beginning August 16, 2011, and continuing until SAIF can lawfully terminate such benefits under OAR 438-012-0035.⁴

Finally, claimant is entitled to a carrier-paid attorney fee for his counsel’s services on reconsideration. ORS 656.382(2); *Antonio L. Martinez*, 61 Van Natta 1892, 1903-04 (2009). 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 reconsideration is \$2,500, payable by SAIF. In reaching this conclusion, we have particularly considered the time devoted to the case on reconsideration (as represented by claimant’s response and his uncontested submission), the complexity of the issues, the value of the interest involved, and the risk that claimant’s counsel might go uncompensated.

Accordingly, on reconsideration, we adhere to and republish our June 15, 2012 order, as supplemented and modified herein. The parties’ rights of appeal and reconsideration shall begin to run from the date of this order.

IT IS SO ORDERED.

Entered at Salem, Oregon on August 13, 2012

³ “Curative treatment” is “treatment that relates to or is used in the cure of diseases, tends to heal, restore to health, or bring about recovery.” *Larry D. Little*, 54 Van Natta 2536, 2544 (2002).

⁴ For any time during this period that claimant was working, he would be entitled to temporary partial disability (TPD), rather than temporary total disability (TTD). ORS 656.210; ORS 656.212(2); ORS 656.278(1)(b).

Member Langer dissenting.

For the reasons expressed in my previous dissent, I continue to find that the record does not establish that claimant required “other curative treatment” for the “post-aggravation rights” new/omitted medical condition (“mid back strain”). I do not dispute that claimant received treatment for that condition. Indeed, the majority lists that treatment. However, we are not free to simply list the prescribed or provided treatment and use our own judgment to conclude that the treatment is “curative,” as the majority has done. Instead, the question of whether treatment was prescribed as “curative” presents a medical question that must be supported by medical evidence. Importantly, the court has cautioned us against reaching medical conclusions in absence of medical evidence. *See Benz v. SAIF*, 170 Or App 22, 25 (2000) (although the Board may draw reasonable inferences from the medical evidence, it is not free to reach its own medical conclusions in the absence of such evidence); *SAIF v. Calder*, 157 Or App 224, 227-28 (1998) (the Board is not an agency with specialized medical expertise and must base its findings on medical evidence in the record); *Jeremy W. Sitzman*, 64 Van Natta 586 (2012).

Here, as explained in my prior dissent, there simply is no medical evidence in this record from which we can determine that the provided or prescribed treatment was “curative.” Furthermore, to the extent that the physicians addressed the various treatments, they appeared to focus on symptomatic relief, rather than any curative purpose. (Exs. 9-1, 11-1). Such symptomatic relief is just as likely to result from “palliative care,” which is defined as “medical service rendered to reduce or moderate temporarily the intensity of an otherwise stable medical condition, but does not include those medical services to diagnose, heal or permanently alleviate or eliminate a medical condition.” ORS 656.005(20).

Because the record does not establish that claimant required (including a physician’s recommendation for) hospitalization, inpatient or outpatient surgery, or other curative treatment (treatment that relates to or is used in the cure of disease, tends to heal, restore to health, or to bring about recovery), it stands to reason that Dr. Vaughn’s authorization for temporary disability benefits was not “for the * * * other curative treatment.” ORS 656.278(1)(b). It is claimant’s burden to prove entitlement to temporary disability benefits. ORS 656.266(1). On this record, I find that he has not met that burden. Because the majority concludes otherwise, I must continue to dissent.