

In the Matter of the Compensation of
KENT C. ROGERS, Claimant
WCB Case No. 10-03329, 10-01145
ORDER APPROVING SETTLEMENT
Hooton Wold & Okrent LLP, Claimant Attorneys
Thaddeus J Hettle & Assoc, Defense Attorneys

Reviewing Panel: Members Lanning and Lowell.

On March 12, 2013, we reversed an Administrative Law Judge's (ALJ's) order that: (1) set aside the self-insured employer's denial of claimant's combined cervical spine condition; and (2) found that claimant's disputed medical services were causally related to his accepted cervical spine conditions. Claimant petitioned for judicial review of our order. The parties have submitted a proposed "Disputed Claim Settlement" (DCS) that is designed to resolve all issues raised or raisable between them. Specifically, the agreement is designed to resolve the parties' dispute pending before the Court of Appeals. We are authorized to consider the parties' settlement. ORS 656.298(9); *Rebecca E. Seelye*, 60 Van Natta 332 (2008).

Pursuant to the settlement, claimant agrees that the employer's denial, as supplemented in the agreement, "shall forever remain in full force and effect." The parties further stipulate that claimant's "Petition for Judicial Review shall be dismissed with prejudice as to any and all issues and claims raised and any and all issues that could have been raised by the Petition for Judicial Review."

We have approved the parties' settlement, thereby fully and finally resolving their dispute.¹ Accordingly, this matter is dismissed with prejudice.

IT IS SO ORDERED.

Entered at Salem, Oregon on January 3, 2014

¹ A provision in the settlement states that a portion of claimant's share of the proceeds shall be provided to his private insurer, Regence Blue Cross, in satisfaction of its lien. Inasmuch as the parties' compensability dispute is being resolved by means of a DCS, only medical service providers may be directly reimbursed from the settlement proceeds. ORS 656.313(4)(c). (Health insurance providers may be directly reimbursed by the workers' compensation carrier if "the services are determined to be compensable." ORS 656.313(4)(b).) Nonetheless, because proceeds from a DCS are not considered "compensation," a claimant's assignment of all or a portion of his share of the proceeds is not prohibited by ORS 656.234. *Wanda D. Gangle*, 55 Van Natta 3655 (2003); *Robert D. Surina*, 40 Van Natta 1855 (1988). Therefore, in granting our approval of the settlement, we have interpreted the agreement as providing that claimant has assigned a portion of his share of the settlement proceeds to the non-workers' compensation carrier. For the reasons previously expressed, such an assignment is not prohibited.

Finally, because the DCS includes claimant's express acknowledgment that the proposed distribution of DCS proceeds to some of his medical service providers exceeds the statutorily prescribed "reimbursement" formula of ORS 656.313(4)(d), the agreement is approvable. See OAR 438-009-0010(2)(g); *Charles E. Munger*, 46 Van Natta 462 (1994).