
In the Matter of the Compensation of
FRANCISCO VARGAS, Claimant
WCB Case No. 13-06146
ORDER ON RECONSIDERATION
Schoenfeld & Schoenfeld, Claimant Attorneys
Gilroy Law Firm, Defense Attorneys

Reviewing Panel: *En Banc*. Members Lanning, Johnson, Somers, Curey, and Weddell.

On October 22, 2014, we reversed an Administrative Law Judge's (ALJ's) order that had affirmed an Order on Reconsideration that declined to award temporary disability benefits for a period in which claimant was receiving medical treatment from a physician that was not affiliated with a Managed Care Organization (MCO). In reaching our conclusion, we reasoned that because the physician had treated claimant for a new/omitted medical condition that was subsequently found compensable, the insurer was obligated to pay temporary disability benefits based on the physician's contemporaneous time loss authorization.

The insurer requests reconsideration, asserting that our order implies that claimant was not entitled to treat with a "non-MCO" physician until the issuance of its denial of the new/omitted medical condition claim. The insurer contends that its responsibility to effectively begin paying temporary disability benefits should not begin until February 3, 2012 (the date of its denial of facet arthropathy/syndrome), rather than December 14, 2011 (the date identified in our order, when claimant began treating with the "non-MCO" physician). Seeking clarification of the reasoning expressed in our order, the insurer requests reconsideration of our decision.¹

After further considering this matter, in light of the insurer's motion, we offer the following additional comments concerning our previous decision.

¹ The insurer further notes that its appeal of the Board's decision finding the new/omitted medical condition claim compensable remains pending before the Court of Appeals and, as such, any compensation due and payable from our order has been stayed pursuant to ORS 656.313(1). As framed in our decision, the issue before us was limited to claimant's entitlement to temporary disability benefits arising from a "provisional" Notice of Closure of a new/omitted medical condition claim that issued pending the appeal of the compensability order concerning that claim. We acknowledge that the compensability of the disputed new/omitted medical condition claim has not been finally determined. Furthermore, any claim processing actions or potential issues arising from our "temporary disability" decision are not issues that are subject to our current appellate review.

As noted in our prior order, the insurer denied new/omitted medical condition claims in both October 2011 and February 2012. (Exs. 96F, 102B). Therefore, to the extent that our order could be interpreted as reasoning that the insurer's obligation to begin paying temporary disability benefits would become effective as of the date of a denial, the October 2011 denial preceded Dr. Miller's treatment in December 2011.

In any event, after the denials of the new/omitted medical condition claims were subsequently overturned, the insurer became responsible for paying any temporary disability benefits based on the "non-MCO" physician's contemporaneous time loss authorizations. *See* OAR 436-060-0020(10). As we found in our previous order, this record establishes that such authorizations began with claimant's December 14, 2011 medical treatment with the "non-MCO" physician and continued until he eventually returned to a "MCO" physician (after the insurer's claim denials were overturned). Consequently, we continue to find that claimant is entitled to additional temporary disability benefits payable from December 14, 2011 through March 11, 2013.

Accordingly, we withdraw our October 22, 2014 order. On reconsideration, as supplemented, we republish our October 22 order. The parties' statutory 30-day rights of appeal shall begin to run from the date of this order.

IT IS SO ORDERED.

Entered at Salem, Oregon on November 4, 2014