
In the Matter of the Compensation of
WCB Case No: 16-00434C
LARRY L. JONES, Claimant
ORDER APPROVING CLAIM DISPOSITION AGREEMENT
Michael N Warshafsky, Claimant Attorneys
Brian L Pocock, Defense Attorneys

Reviewing Panel: Members Lanning and Johnson.

On February 22, 2016, the Board received the parties' claim disposition agreement (CDA) in the above-captioned matter. On March 7, 2016, the Board received the parties' CDA addendum. Pursuant to that amended agreement, in consideration of the payment of a stated sum, claimant releases certain rights to future workers' compensation benefits, except medical services, for his compensable injury. We approve the proposed disposition, as amended.

The initial proposed CDA provided that claimant releases his rights to workers' compensation benefits, except for matters related to medical services, but did not expressly preserve his eligibility for preferred worker status. Additionally, the CDA provided that the parties' previous agreement regarding the termination of claimant's employment "remains effective and is not altered by this [CDA]."

The Board notified the parties that a CDA may not include provisions pertaining to the "employment termination agreement." See *Karen A. Vearrier*, 42 Van Natta 2071 (1990). Additionally, the Board sought supplementation of the proposed CDA to expressly confirm that claimant retained his eligibility for preferred worker status. See ORS 656.622(4)(a). Accordingly, the Board requested an addendum clarifying these matters.

The parties' CDA addendum deletes the reference to the "employment termination agreement." Additionally, the addendum states that the CDA is not intended to waive claimant's eligibility for preferred worker status under this CDA. Concerning this addition, the carrier's counsel notes that in the initial CDA, the parties had expressly specified the particular "workers' compensation benefits that are being released." In response, we offer the following explanation for our "addendum" request.

ORS 656.236(1)(a) provides that "[u]nless otherwise specified, a [CDA] resolves all matters and all rights to compensation, attorney fees and penalties potentially arising out of claims, except medical services, regardless of the

conditions stated in the agreement.” ORS 656.236(1)(a). Based on this provision, notwithstanding the CDA’s specification of what benefits the parties intend to release, the absence of a provision expressly retaining claimant’s eligibility for preferred worker status arguably raises a question as to whether the CDA is designed to attempt to release that right (notwithstanding ORS 656.622(4)(a)).

Thus, in the interests of resolving any potential ambiguity concerning the proposed CDA, we requested express confirmation of the parties’ intention regarding claimant’s retention of “preferred worker status” eligibility. We interpret the addendum, submitted in response to that request, to expressly clarify their intentions that, consistent with ORS 656.622(4)(a), claimant’s eligibility for preferred worker status is retained.

The amended CDA, as clarified by this order, is in accordance with the terms and conditions prescribed by the Board. *See* ORS 656.236(1). Accordingly, the parties’ CDA is approved.

If the parties disagree with our interpretation of the CDA, they may move for reconsideration by filing a motion for reconsideration within 10 days of the date of mailing of this order. OAR 438-009-0035.

IT IS SO ORDERED.

Entered at Salem, Oregon on March 15, 2016