

In the Matter of the Compensation of  
**MICHAEL K. SPURGEON, Claimant**

WCB Case No. 16-03087

**ORDER ON RECONSIDERATION**

Johnson Johnson Lucas & Middleton, Claimant Attorneys

Ronald W Atwood PC, Defense Attorneys

Reviewing Panel: Members Ousey and Johnson.

On November 6, 2017, we reversed an Administrative Law Judge's (ALJ's) order that awarded temporary disability benefits, a penalty and attorney fees. Claimant seeks reconsideration of our order, contending that the self-insured employer's knowledge of his inability to work due to hospitalization/surgery was sufficient to trigger its duty to pay interim compensation under ORS 656.262(4)(a). Asserting that claimant has mis-stated the law, the employer requests that claimant's motion be denied. Based on the following reasoning, we adhere to our prior order.

Claimant asserts that the employer's obligation to pay temporary disability benefits was triggered by May 27, 2016, when he filed his claim. According to claimant, at that time, the employer had both notice of his claim and knowledge that he would be unable to perform his normal job without restrictions. However, as we emphasized in our prior order, under ORS 656.262(4)(a), interim compensation (*i.e.*, temporary disability benefits) is due when a carrier has received both notice of a claim and an attending physician's medical verification of an inability to work due to the claimed injury. Although it need not be express, and may be implied from contemporaneous medical records, an attending physician's authorization is a prerequisite for interim compensation (temporary disability benefits) under ORS 656.262(4)(a). *See Lederer v. Viking Freight, Inc.*, 193 Or App 226, 237, *adh'd to as modified on recons*, 195 Or App 94 (2004) (interim compensation is due under ORS 656.262(4)(a), even without express authorization from an attending physician, when an objectively reasonable insurer or self-insured employer would understand contemporaneous medical reports to signify approval from the attending physician of the worker's inability to work).

Here, as discussed in our prior decision, this record establishes that the employer did not have any information/documentation *from an attending physician*, from which an objectively reasonable employer could infer that the payment of interim compensation had been authorized, until it had received claimant's contemporaneous medical records on June 30, 2016. Because the employer denied the claim within 14 days of June 30, 2016, we continue to conclude that no interim compensation was due and payable.

Accordingly, we withdraw our November 6, 2017 order. On reconsideration, as supplemented herein, we adhere to and republish our November 6, 2017 order in its entirety. The parties' 30-day rights of appeal shall begin to run from the date of this order.

**IT IS SO ORDERED.**

Entered at Salem, Oregon on December 1, 2017