

In the Matter of the Compensation of
JEFFERY L. MILLER, Claimant
WCB Case No. 16-03365
ORDER ON REVIEW
Moore & Jensen, Claimant Attorneys
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Lanning and Curey.

Claimant requests review of Administrative Law Judge (ALJ) Pardington's order that declined to award penalties and related attorney fees for the SAIF Corporation's allegedly unreasonable claim processing. On review, the issues are penalties and attorney fees.

We adopt and affirm the ALJ's order with the following supplementation.

Claimant argues that because he requested judicial review by the Court of Appeals of only that portion of the Board's August 14, 2015 order that upheld the denial of his injury claim, the costs awarded in the Board's order (concerning his compensable occupational disease claim) are payable. Based on the following reasoning, we disagree with claimant's contention.

OAR 438-015-0019(3) provides that if an order does not specify the amount of a reasonable award for expenses and costs, the claimant shall submit within 30 days after the "order becomes final," a cost bill to the carrier. A Board order becomes final unless, within 30 days, one of the parties files a petition for judicial review with the Court of Appeals. ORS 656.298.

Here, the Board's August 4, 2015 order did not specify a reasonable award for expenses and costs, and claimant timely filed a petition for judicial review of the order with the Court of Appeals. Therefore, the order has not "become final" within the meaning of OAR 438-015-0019(3).

Accordingly, under these particular circumstances, SAIF was not obligated to pay the Board's cost award. *See, e.g., Brian C. Carlson*, 64 Van Natta 2381 (2012) (the appropriate procedure for claiming and recovering an award of reasonable expenses and costs is for the claimant to submit a cost bill to the employer if and when the Board's order becomes final); *Joe Leeper*, 60 Van Natta 407 (2008) (same). Consequently, we affirm the ALJ's decision that SAIF's claim processing (*i.e.*, its refusal to pay claimant's cost bill due to his pending appeal of the Board's order) was not unreasonable.

ORDER

The ALJ's order dated January 6, 2017 is affirmed.

Entered at Salem, Oregon on August 1, 2017