
In the Matter of the Compensation of
GREGORY E. BUTLER, Claimant
WCB Case No. 17-00481
ORDER ON REVIEW
Alvey Law Group, Claimant Attorneys
Cummins Goodman et al, Defense Attorneys

Reviewing Panel: Members Ousey and Curey.

The self-insured employer requests review of Administrative Law Judge (ALJ) Pardington's order that set aside its denial of claimant's new/omitted medical condition claim for a right shoulder condition. On review, the issue is compensability.

We adopt and affirm the ALJ's order.¹

Claimant's counsel is entitled to an assessed attorney fee for services on review. ORS 656.382(2). After considering the factors set forth in OAR 438-015-0010(4) and applying them to this case, we find that a reasonable fee for claimant's counsel's services on review is \$4,500, to be paid by the employer. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by claimant's respondent's brief), the complexity of the issue, the value of the interest involved, the risk that claimant's counsel might go uncompensated, and the contingent nature of the practice of workers' compensation law.

Finally, claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, to be paid by the employer. See ORS 656.386(2); OAR 438-015-0019; *Gary E. Gettman*, 60 Van Natta 2862 (2008). The procedure for recovering this award, if any, is prescribed in OAR 438-015-0019(3).

¹ The employer contends that claimant is an unreliable historian because his testimony regarding right shoulder complaints contradicts the contemporaneous medical records of the first responders and the emergency room, which recorded contusions on claimant's left foot, thigh, and hip, but no right shoulder symptoms. (Exs. 3, 5). Yet, the contemporaneous chart note of the attending physician, Dr. Karmy, who initially examined claimant within 24 hours of the work injury (and about 12 hours after the start of his right shoulder symptoms), is consistent with claimant's testimony. (Ex. 7; Tr. 7-9). Thus, we are not persuaded that claimant was an unreliable historian.

ORDER

The ALJ's order dated December 5, 2017 is affirmed. For services on review, claimant's attorney is awarded an assessed fee of \$4,500, to be paid by the employer. Claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, to be paid by the employer.

Entered at Salem, Oregon on August 6, 2018