
In the Matter of the Compensation of
JOHN H. GROTJOHN, Claimant
WCB Case No. 00-04053
ORDER ON REVIEW
Claimant Unrepresented
Breathouwer & Gilman, Defense Attorneys

Reviewing Panel: Members Biehl, Phillips Polich, and Bock.¹

Claimant, *pro se*, requests review of Administrative Law Judge (ALJ) Hoguet's order that: (1) found that the parties agreed to defer/preserve any overpayment issues; and (2) affirmed an Order on Reconsideration that awarded 15 percent (22.5 degrees) scheduled permanent disability for loss of use or function of claimant's left knee. On review, the issues are the ALJ's procedural ruling and extent of scheduled permanent disability.

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

Claimant asks us to decide whether the employer properly deducted an alleged overpayment. We decline to address the issue, for the following reasons.

The ALJ stated that the parties agreed to defer or preserve any overpayment issues. No overpayment issue was subsequently raised on the hearings record.

Under these circumstances, we find that no issue of overpayment was raised at hearing.² See *Michael R. Petkovich*, 34 Van Natta 98 (1982) (an ALJ's scope of review is limited to issues raised by the parties); see also *Fister v. SAIF*, 149 Or App 214 (1997) (Board's own precedent establishes the rule that we consider only issues raised by the parties at the hearing); *Destael v. Nicolai*, 80 Or App 723 (1986) (scope of our *de novo* review encompasses all issues considered by the ALJ).

¹ After consultation with the Department of Justice, this Board has chosen to exercise its right to issue orders as a panel of three pursuant to ORS 656.718(2) and (3).

² Claimant does not dispute the ALJ's finding regarding the parties' agreement to defer and preserve any overpayment issue at hearing. However, claimant refers to closing arguments as discussing an alleged overpayment and asks us to address it. Assuming, without deciding, that an overpayment issue was first raised during closing arguments, we decline to address it. See *Lawrence E. Millsap*, 46 Van Natta 2112, 2112-13 (1995) (we have consistently declined to consider an issue raised for the first time during closing argument).

Finally, claimant contends that his right knee has a history of disease or injury and therefore his left knee impairment should be determined without comparing it to his right knee. *See* OAR 436-035-0007(23). We disagree, because there is no persuasive evidence from claimant's attending physician (including a source ratified by an attending physician) or the medical arbiter that supports a conclusion that the right knee has such a history. *See Serafin v. Lopez*, 154 Or App 149, 155 (1998) (in the absence of ratification by an attending physician or findings from a medical arbiter, a physical therapist's report arguably supporting a history of injury or disease to a contralateral joint was not considered and a claimant's compensable right knee was properly rated by comparing his knees).

ORDER

The ALJ's order dated June 8, 2001 is affirmed.

Entered at Salem, Oregon on April 12, 2002