
In the Matter of the Compensation of
DENISE COLEMAN, Claimant
WCB Case No. 02-06875
ORDER ON RECONSIDERATION
Cary et al, Claimant Attorneys
John E Snarskis & Associates, Defense Attorneys

Reviewing Panel: Members Lowell and Biehl.

Claimant requests reconsideration of our November 5, 2003 Order on Review that affirmed an Administrative Law Judge's (ALJ) order that declined to reopen the record to obtain a medical arbiter's report and examination. Claimant contends that the only way the remedy of an arbiter would have been available was if some party had raised an objection to her scheduled permanent disability award granted by a Notice of Closure. Because claimant did not object to the scheduled permanent disability award, she argues that an "arbiter request" under ORS 656.268(7)(a) was not available to her. Claimant further argues that she was not provided "notice" that the Director would "raise" an "unraised" issue and evaluate an uncontested permanent impairment/disability award. Finally, claimant argues that because there had been no disagreement with the impairment value assigned by the insurer, the issue of appointing an arbiter did not arise from the request for reconsideration, but rather, it arose from the Order on Reconsideration itself, and therefore, the remedy of a mandatory arbiter was never available to claimant prior to the hearing before the ALJ. Based on the following reasoning, we adhere to our prior decision.

OAR 436-030-0115(5) provides as follows:

"Only one reconsideration proceeding may be completed on each Notice of Closure and the director will do a complete review of that notice. Once the reconsideration proceeding is initiated by the worker, the insurer must raise any additional issues and submit any evidence for review by the director within the time frames allowed for processing the reconsideration request. When the director requires additional information to complete the record, the reconsideration proceeding may be postponed pursuant to ORS 656.268(6)."

Consequently, all parties are notified that the Director will do a *complete* review of the Notice of Closure, which necessarily includes all awards and related issues

arising therefrom. As such, we disagree with claimant's assertion that she was not notified that the Director would pursue an "unraised" issue.

As a practical matter, given the extent of the Director's review, a party requesting reconsideration must consider their options carefully. If they are considering requesting reconsideration and may have a disagreement with any impairment finding, they should seek an arbiter exam or submit clarifying information if they decide to request reconsideration. If they are not in disagreement with impairment findings, or do not contest a particular award, they must consider the possibility that the Director will review those uncontested matters and possibly reduce or increase the claimant's award, or even rescind the entire closure.

Here, claimant requested reconsideration of the Notice of Closure seeking an increase in unscheduled permanent disability based on the age, education and adaptability factors. Claimant did not contest the scheduled permanent disability award granted by the Notice of Closure. Nonetheless, the Director performed a complete review and determined that the closing examination findings, which the attending physician ratified, were insufficient to support an award for decreased sensation under the applicable administrative rule. *See* OAR 436-035-0110(1).¹ Because the closing examination report preceded claimant's request for reconsideration, claimant had the option of clarifying these insufficiencies by either obtaining a report from the attending physician or by requesting a medical arbiter examination to address the sensory findings. ORS 656.268(6)(a)(B); ORS 656.268(7)(a). Because claimant chose not to take such actions and the ARU proceeded with its review in accordance with OAR 436-030-0115(5), it does not necessarily lead to the conclusion advanced by claimant that the process has unlawfully deprived her of a remedy.

Accordingly, we withdraw our November 5, 2003 order. On reconsideration, as supplemented herein, we adhere to and republish our prior order. The parties' rights of appeal shall begin to run from the date of this order.

IT IS SO ORDERED.

Entered at Salem, Oregon on December 4, 2003

¹ This rule provides:

"Loss of palmar sensation in the hand, finger(s), or thumb is rated according to the location and quality of the loss, and shall be measured by the two point discrimination method as noted by the AMA Guides, 3rd Ed. Rev., 1990."