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In the Matter of the Compensation of  
**MACK L. PARNELL, Claimant**  
Own Motion No. 04-0425M  
OWN MOTION ORDER  
Malagon Moore et al, Claimant Attorneys  
SAIF Corporation, Insurance Carrier

Reviewing Panel: Members Lowell and Kasubhai.

The SAIF Corporation has submitted claimant's request for claim reopening for his previously accepted right ankle condition. ORS 656.278(1)(a) (2001). Claimant's aggravation rights have expired. SAIF opposed reopening, contending, among other issues, that claimant's compensable condition does not require any medical treatment that qualifies his claim for reopening. Based on the following reasoning, we deny claim reopening.

FINDINGS OF FACT

On August 31, 2004, claimant sought treatment from Dr. Noall, his attending physician, for right ankle pain. Noting that claimant was unable to work due to the pain, Dr. Noall ordered an MRI. (Ex. 17). On September 21, 2004, Dr. Noall released claimant to modified work. (Ex. 20).

Claimant returned to Dr. Noall on September 28, 2004, who noted that claimant's condition had mildly improved. Indicating that claimant's right ankle pain could possibly be related to osteochondritis lesions in the talus, Dr. Noall recommended referral to a foot and ankle specialist. Dr. Noall released claimant to regular work. (Ex. 23).

In October 2004, Dr. Noall was unable to identify the cause of claimant's right ankle pain, as well as any condition that would require "surgery, hospitalization or curative treatment in lieu of surgery." Dr. Noall again recommended an examination by a foot and ankle specialist. (Ex. 27).

CONCLUSIONS OF LAW AND OPINION

Among the requirements for claim reopening under ORS 656.278(1)(a) (2001), there must be a worsening that requires hospitalization, surgery (either inpatient or outpatient), or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the worker to return to work.

In *Larry D. Little*, 54 Van Natta 2536 (2002), we concluded that if any one of the three qualifying medical treatments listed in ORS 656.278(1)(a) (2001) is satisfied, a “worsening condition” claim meets the medical treatment requirement for reopening in Own Motion. In *Little*, 54 Van Natta at 2542, we defined the three qualifying medical treatments listed in ORS 656.278(1)(a) (2001) in the following manner: (1) “Surgery” is defined as an invasive procedure undertaken for a curative purpose that is likely to temporarily disable the worker; and (2) “hospitalization” is defined as a nondiagnostic procedure that requires an overnight stay in a hospital or similar facility. The third type of qualifying treatment requires establishment of three elements: (1) curative treatment (treatment that relates to or is used in the cure of diseases, tends to heal, restore to health, or to bring about recovery); (2) prescribed (directed or ordered by a doctor) in lieu of (in the place of or instead of) hospitalization; and (3) that is necessary (required or essential) to enable (render able or make possible) the injured worker to return to work. *Little*, 54 Van Natta at 2546.

Whether a worsening of the compensable injury requires hospitalization, inpatient or outpatient surgery, or “other curative treatment prescribed in lieu of hospitalization that is necessary to enable the injured worker to return to work” presents a medical question that must be addressed by medical evidence. In other words, we cannot infer that a treatment involves hospitalization, inpatient or outpatient surgery, or “other curative treatment prescribed in lieu of hospitalization that is necessary to enable the injured worker to return to work.” *SAIF v. Calder*, 157 Or App 224, 227-28 (1998) (“the Board is not an agency with specialized medical expertise entitled to take official notice of technical facts within its specialized knowledge”); *Terry L. Smith*, 55 Van Natta 2763 (2003). This question must be answered by persuasive medical evidence.

Based on our review, the record does not establish that claimant’s condition worsened requiring hospitalization, surgery or other curative treatment that was prescribed in lieu of (instead of or in place of) hospitalization that was necessary to enable him to return to work. ORS 656.278(1)(a) (2001); *Larry D. Little*, 54 Van Natta at 2546. Specifically, no physician recommended surgery or hospitalization. Furthermore, a recommendation for an ankle/foot specialist examination does not persuasively establish “other curative treatment prescribed in lieu of hospitalization that is necessary to enable the injured worker to return to work.” See *Stephen Jackson*, 55 Van Natta 2421, 2422 (2003) (although treatment (prescription medication) was arguably curative and necessary to enable the

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claimant to return to work, there was no evidence that the treatment was prescribed in lieu of hospitalization).; *Mark R. Gescher*, 55 Van Natta 1956 (2003) (same).<sup>1</sup>

Under these circumstances, we conclude that this Own Motion claim for a worsening of claimant's previously accepted condition (fractured lateral malleolus, right ankle and osteochondral fracture of the medial dome of the talus) does not satisfy the criteria set forth in ORS 656.278(1)(a) (2001) to qualify this worsening claim for reopening.<sup>2</sup>

Consequently, we deny the reopening of the Own Motion claim.

IT IS SO ORDERED.

Entered at Salem, Oregon on December 22, 2004

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<sup>1</sup> Additionally, SAIF contended that claimant was not in the work force at the time of the current disability. ORS 656.278(1)(a) (2001). In this particular case, this matter need not be addressed because even if the work force issue was found in claimant's favor, the record would still be insufficient to support a claim reopening under ORS 656.278(1)(a) (2001).

<sup>2</sup> If a party obtains medical evidence that addresses the requisite medical treatment component and "work force" requirement, that party may request reconsideration of our decision. ORS 656.278(1)(a) (2001). However, because our authority to reconsider this decision expires within 30 days after the mailing date of the Own Motion Order, the reconsideration request must be filed within that 30-day period. OAR 438-012-0065(2).