
In the Matter of the Compensation of
JAMES KELLY, Claimant
Own Motion No. 03-0383M
OWN MOTION ORDER REVIEWING CARRIER CLOSURE
Claimant Unrepresented
Cavanagh & Zipse, Defense Attorneys

Reviewing Panel: Members Langer, Kasubhai, and Bock.

Claimant requests review of the insurer's June 20, 2003 "Notice of Closure: Own Motion Claim" (Notice of Closure) that did not award permanent disability resulting from claimant's "worsened condition" claim. Claimant contends that he is entitled to additional permanent disability benefits. We affirm the Notice of Closure.

FINDINGS OF FACT

Claimant sustained a compensable injury to his low back on September 29, 1986. The insurer accepted "L5-S1 broad-based disc bulge consistent with a scar tissue soft-tissue protrusion." An April 2, 1987 Determination Order awarded 5 percent unscheduled permanent disability. Claimant's aggravation rights expired on April 2, 1992.

On November 8, 2002, the insurer issued a Notice of Voluntary Reopening based on a worsening of claimant's compensable condition under ORS 656.278(1)(a) (2001). (Ex. 26).

On May 16, 2003, claimant's attending physician, Dr. Graham, concluded that claimant had reached medically stationary status with regard to his L5-S1 disc condition. (Exs. 40-2, 41). The insurer issued a Notice of Closure on June 20, 2003, awarding temporary disability, but no permanent disability.

The Board received claimant's request for review of the June 20, 2003 closure on August 27, 2003.

CONCLUSIONS OF LAW AND OPINION

Assuming that "good cause" has been shown, and therefore, that claimant's untimely request for review may be considered, we address the merits of claimant's contention that he is entitled to a permanent disability award.¹

¹ Claimant's September 29, 1986 claim was accepted as a disabling claim and was first closed on April 2, 1987. Thus, claimant's aggravation rights expired on April 2, 1992. Therefore, when the claim

In *Ginney E. Etherton*, 55 Van Natta 2216 (2003), *Clayton L. Sutherland*, 55 Van Natta 2694 (2003), and *Dennis D. Kessel*, 55 Van Natta 3651 (2003), we concluded that when a claim has been reopened pursuant to our Own Motion authority for a “worsened condition” under ORS 656.278(1)(a) (2001), its subsequent closure pertained only to the “worsened condition” claim. Here, because the insurer’s November 8, 2002 Notice of Voluntary Reopening was limited to a worsening of claimant’s compensable L5-S1 condition and designated ORS 656.278(1)(a) (2001) as the statutory basis for its reopening, we conclude that its June 20, 2003 Notice of Closure pertained only to the claim for a “worsened condition.”

In *Jimmy O. Dougan*, 54 Van Natta 1213 (2002), *on recon* 54 Van Natta 1552 (2002), after examining the text and context of ORS 656.278(1)(a), (1)(b), and (2)(d) (2001), we determined that permanent disability benefits for claims that are in Own Motion status are only available for “post-aggravation rights” new and omitted medical condition claims. *Dougan*, 54 Van Natta at 1226. Such benefits are not available where there is a “worsening” of a compensable injury that is in Own Motion status. *Id.* It follows that claimant is not entitled a permanent disability award based on closure of his claim for a “worsened condition.” ORS 656.278(1)(a), (2)(d) (2001). To the extent that claimant purports to raise issues regarding “post-aggravation rights” new medical condition claims, such claims must be directed in writing to the insurer for processing. ORS 656.267(3) (2001); ORS 656.278(1)(b) (2001); OAR 438-012-0020; OAR 438-012-0030.

In conclusion, claimant is not entitled to the permanent disability compensation he seeks.²

IT IS SO ORDERED.

Entered at Salem, Oregon on February 10, 2004

was voluntarily reopened on November 8, 2002, it was within our Own Motion jurisdiction. ORS 656.278(1)(a) (2001). On June 20, 2003, the insurer issued its Notice of Closure.

² Inasmuch as claimant is unrepresented, he may wish to consult the Workers’ Compensation Ombudsman, whose job it is to assist workers in such matters. He may contact the Workers’ Compensation Ombudsman, free of charge, at 1-800-927-1271, or write to:

WORKERS’ COMPENSATION OMBUDSMAN
DEPT OF CONSUMER & BUSINESS SERVICES
PO BOX 14480
SALEM, OR 97309-0405