
In the Matter of the Compensation of
LEN ANDERSON, Claimant
Own Motion No. 03-0528M
OWN MOTION ORDER REFERRING FOR CONSOLIDATED HEARING
Glen J Lasken, Claimant Attorneys
Wallace Klor & Mann PC, Defense Attorneys

Reviewing Panel: Members Lowell and Kasubhai.

The self-insured employer has submitted a “Carrier’s Own Motion Recommendation,” indicating that claimant seeks reopening of his 1987 claim for a worsening of his previously accepted conditions and “post-aggravation rights” new medical conditions (“cervical pain, episodic blackouts, tinnitus”). ORS 656.278(1)(a), (b) (2001). The employer recommends against reopening contending, among other reasons, that claimant’s current condition is not causally related to the compensable condition.

Claimant sustained a compensable cervical and head injury on July 15, 1987. Claimant’s aggravation rights have expired. The employer has issued a denial. Claimant requested a hearing with the Hearing Division regarding that denial. (WCB Case No. 03-09207). A hearing is set for March 22, 2004 before an Administrative Law Judge (ALJ).

Because this is a “pre-September 1, 2003” “post-aggravation rights” new medical condition claim and considering the potential complexities of the medical, legal, and factual issues arising from this dispute, we conclude that it would be appropriate to consolidate the Own Motion matter concerning the “post-aggravation rights” new or omitted medical condition claim with the pending litigation.¹ *Andrew B. Speck*, 55 Van Natta at 103, 105 (2003); *Jesse C. Day*, 54 Van Natta 2382 (2002); *Sheila R. Hedrick*, 54 Van Natta 2354 (2002). That

¹ The employer states that the “post-aggravation rights” new medical condition claim was initiated on March 18, 2003. Inasmuch as the claim was filed prior to September 1, 2003, the amendments to the Board’s Own Motion rules are not applicable. See OAR 438-012-0018; *Keith A. Broeckel*, 55 Van Natta 3572 (2003). Consequently, the requirement that a carrier issue a denial of a “post-aggravation rights” new or omitted medical condition claim, with a notice of appeal to the Hearings Division, when it is contesting the compensability/responsibility of the claim does not apply. OAR 438-012-0070; OAR 438-012-0075. As such, we retain original authority to refer this claim for a fact finding hearing. See OAR 438-012-0040(3); *Andrew B. Speck*, 55 Van Natta 103 (2003). Therefore, the ALJ is directed to issue an unappealable Own Motion recommendation pursuant to OAR 438-012-0040(3) (2002).

consolidated proceeding may be conducted in any manner that the ALJ deems achieves substantial justice.

In addition to an order in WCB Case No. 03-09207, the ALJ is directed to forward to the Board a separate, unappealable recommendation with respect to any Own Motion matters and a copy of the order issued in WCB Case No. 03-09207.² In the recommendation, the ALJ shall make findings of fact and conclusions of law regarding the issues raised in claimant's request for Own Motion relief. In addition, if the matter is resolved by stipulation or Disputed Claim Settlement, the ALJ is directed to submit a copy of the settlement document to the Board. After issuance of the recommendation and order (or settlement document), the parties should advise the Board of their respective positions regarding the Own Motion matters.

IT IS SO ORDERED.

Entered at Salem, Oregon on February 24, 2004

² If the employer subsequently issues a Form 3501, announcing that it is voluntarily reopening this currently disputed claim, the parties should notify the Board. In the event that the issuance of the voluntary claim reopening form comes to our attention, we will consider dismissal of this Own Motion matter. See *Jesse C. Day*, 55 Van Natta 2366, 2369-70 (2003).