
In the Matter of the Compensation of
WILLIAM J. AMACKER, Claimant
Own Motion No. 03-0264M
OWN MOTION ORDER REFERRING FOR CONSOLIDATED HEARING
Black Chapman et al, Claimant Attorneys
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Langer and Biehl.

The SAIF Corporation has submitted a “Carrier’s Own Motion Recommendation,” indicating that claimant seeks reopening of his 1985 left knee condition claim for a worsening of his previously accepted conditions and “post-aggravation rights” new medical conditions (“lateral arthrosis, left knee, status-post anterior cruciate ligament reconstruction”). ORS 656.278(1)(a), (b) (2001).¹ The insurer recommends against reopening contending, among other reasons, that claimant’s current condition is not causally related to the compensable condition.

Claimant sustained a compensable left knee injury on October 14, 1985. Claimant’s aggravation rights have now expired. SAIF has issued a denial. Claimant requested a hearing with the Hearing Division regarding that denial. (WCB Case No. 03-08735). A hearing is set for March 5, 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 in the best interest of the parties to consolidate the Own Motion matter concerning the “post-aggravation rights” new or omitted medical condition claim with the pending litigation.² *Andrew B. Speck*, 55 Van Natta at 103, 105 (2003); *Jesse C. Day*,

¹ With its submission regarding claimant’s “post-aggravation rights” new medical conditions, SAIF acknowledges that it has voluntarily reopened claimant’s 1985 left knee claim for a worsening of his previously accepted left knee condition under ORS 656.278(1)(a) (2001) by submitting a Form 3501. OAR 438-012-0030.

² A review of the record shows that claimant initiated his “post-aggravation rights” new medical condition claim on July 7, 2003. We have amended our Own Motion rules to provide for acceptances and denials of “post-aggravation rights” new or omitted medical condition claims and for a hearing on appeal of denials, resulting in a Proposed and Final Own Motion Order on the merits by an ALJ that is final and enforceable unless timely appealed to the Own Motion Board. See WCB Admin. Order 2-2003, OAR 438-012-0001(4), OAR 438-012-0024, OAR 438-012-0070, OAR 438-012-0075, OAR 438-012-0090, OAR 438-012-0095. However, these amended rules apply to Own Motion claims filed or initiated on or

54 Van Natta 2382 (2002); *Sheila R. Hedrick*, 54 Van Natta 2354 (2002). That consolidated proceeding may be conducted in any manner that the ALJ deems achieves substantial justice.

In addition to an order in WCB Case No. 03-08735, 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. 03-08735.³ 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 January 15, 2004

after September 1, 2003. *Keith A. Broeckel*, 55 Van Natta 3572 (2003); *Gary S. Fox*, 55 Van Natta 3026, 3033 fn3 (2003).

Here, because claimant's claim was filed *before* September 1, 2003, these amended rules do not apply to his claim. 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 contending that no acceptance of the claim is required because the previously issued Notice(s) of Acceptance reasonably apprises claimant and the medical providers of the nature of the compensable condition(s), does not apply. OAR 438-012-0080. 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).

³ If SAIF 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).