
In the Matter of the Compensation of
SHARON W. DUNHAM, Claimant
Own Motion No. 03-0451M
OWN MOTION ORDER REFERRING FOR FACT FINDING HEARING
Claimant Unrepresented
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Lowell and Biehl.

The SAIF Corporation has submitted a “Carrier’s Own Motion Recommendation,” indicating that claimant seeks reopening of his 1995 facial injury claim for a “post-aggravation rights” new or omitted medical condition (“temporal mandibular joint, temporal mandibular disorder”). See ORS 656.278(1)(b) (2001). SAIF recommends against reopening, contending that: (1) claimant’s current condition is not causally related to the compensable condition; and (2) it is not responsible for claimant’s current condition.

Claimant sustained a compensable facial injury on December 16, 1995. Claimant’s aggravation rights have expired. Subsequently, claimant requested that SAIF accept “temporal mandibular joint, temporal mandibular disorder.” Based on a variety of grounds, SAIF recommends against the reopening of claimant’s new medical condition claim.

Because this is a “pre-September 1, 2003” “post-aggravation rights” new medical condition claim and considering the legal, medical and factual complexity of the issues in this Own Motion matter, we conclude that it is appropriate to refer this Own Motion matter to the Hearings Division for an evidentiary hearing. OAR 438-012-0040(3); *Mariellen Anderson*, 55 Van Natta 1421 (2003).¹

¹ A review of the record shows that claimant initiated her “post-aggravation rights” new medical condition claim on July 1, 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 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 her 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 contesting the compensability/responsibility of the claim, does not apply. OAR 438-012-0070;

At the hearing, the documentary and testimonial record can be further developed regarding the parties' contentions. The hearing may be conducted in any manner that the ALJ determines will achieve substantial justice.

Following the hearing, the ALJ shall issue a recommendation to the Board within 30 days. In that recommendation, the ALJ shall make findings of fact and conclusions of law regarding the issues arising from claimant's request for Own Motion relief. Those findings and conclusions shall be contained in an unappealable recommendation, which the ALJ shall forward to the Board.² After issuance of the recommendation (or settlement document), the parties should advise the Board of their respective positions regarding the Own Motion matters. Thereafter, the Board would proceed with its review.³

IT IS SO ORDERED.

Entered at Salem, Oregon on January 26, 2004

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).

² 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).

³ Finally, inasmuch as claimant is unrepresented, she may wish to consult the Workers' Compensation Ombudsman, whose job it is to assist injured workers in such matters. She 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