
In the Matter of the Compensation of
LARRY A. MOCCARDINE, Claimant
Own Motion No. 03-0476M
OWN MOTION ORDER
Carney Buckley Hays & Marsh, Claimant Attorneys
Royal & Sunalliance, Insurance Carrier

Reviewing Panel: Members Biehl and Langer.

The insurer has submitted claimant's request for claim reopening. Claimant's aggravation rights have expired. The insurer recommends claim reopening for a worsening of his previously accepted condition and for a "post-aggravation rights" new medical condition ("L4-5 disc herniation"). See ORS 656.278(1)(b) (2001), ORS 656.278(1)(a), (b) (2001).

Under ORS 656.278(1)(b) (2001), there are two requirements regarding claim reopening for a "post-aggravation rights" new or omitted medical condition claim. First, the new or omitted medical condition claim must have been initiated after the expiration of the claimant's aggravation rights under ORS 656.273. Second, the new or omitted medical condition must be accepted or compensable. See *James J. Kemp*, 54 Van Natta 491 (2002).

Based on the record, we are persuaded that claimant meets the criteria necessary for his claim to be reopened for a "post-aggravation rights" new medical condition under ORS 656.278(1)(b) (2001). *James J. Kemp*, 54 Van Natta 419 (2002). Accordingly, we authorize the reopening of claimant's new medical condition claim for the insurer to provide benefits in accordance with law. When claimant's new medical condition is medically stationary, the insurer shall close the claim pursuant to OAR 438-012-0055.¹

Finally, claimant's attorney is allowed an approved fee in the amount of 25 percent of any increased temporary disability compensation resulting from this

¹ Insofar as the claim reopening pertains to a "worsening" of claimant's previously accepted lumbar strain condition, the record does not demonstrate that he has met the necessary criteria for reopening under ORS 656.278(1)(a) (2001). Specifically, the record does not contain evidence that would satisfy the "worsening" requirements since the June 2003 claim closure. Under such circumstances, we are without authority to reopen the claim for a worsened condition under ORS 656.278(1)(a) (2001).

order, not to exceed \$1,500, payable by the insurer directly to claimant's attorney.
See 438-015-0080(1).

IT IS SO ORDERED.

Entered at Salem, Oregon on January 22, 2004