
In the Matter of the Compensation of
GARY L. ROBINSON, Claimant
Own Motion No. 66-0486M
OWN MOTION ORDER REFERRING FOR FACT FINDING HEARING
Malagon Moore et al, Claimant Attorneys
Alice Bartelt, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Biehl and Langer.

Claimant requests review of the SAIF Corporation's September 5, 2003 Notice of Closure, as corrected on October 6, 2003, that closed his claim with an award of 26 percent (39 degrees) unscheduled permanent disability compensation for a "post-aggravation rights" new medical condition ("osteoarthritis, left knee"). In addition to other requests, claimant seeks an opportunity to cross-examine Dr. Mohler, his attending physician, regarding the physician's March 18, 2002 closing evaluation. We treat this matter as a request for a fact finding hearing. OAR 438-012-0040; *Laura A. Heisler*, 55 Van Natta 3974 (2003); *David L. Grenbemer*, 49 Van Natta 449 (1997).

Considering the legal, medical, and factual complexity of the disputed issues, we conclude that it is appropriate to refer this Own Motion matter to the Hearings Division for an evidentiary hearing. OAR 438-012-0060(6); *Laura A. Heilser*, 55 Van Natta at 3975; *Ed Gibson*, 50 Van Natta 832 (1998). The hearing may be conducted in any manner that the Administrative Law Judge (ALJ) determines will achieve substantial justice.¹

Following the hearing, the ALJ shall issue an unappeable recommendation to the Board. In that recommendation, the ALJ shall make findings of fact and conclusions of law regarding the issues arising from claimant's request for Board review of the Notice of Closure including, but not limited to: (1) any evidentiary related issues raised by the parties; (2) claimant's entitlement to a permanent disability award; and (3) claimant's request for an attorney fee. Those findings and conclusions shall be contained in an unappealable recommendation, which the ALJ shall forward to the Board. In addition, if the parties submit a stipulation, the ALJ

¹ Noting potential inconsistencies in Dr. Mohler's medical reports, SAIF initially requested the appointment of a medical arbiter. Nonetheless, after claimant proposed the cross-examination of Dr. Mohler, SAIF raised no objection to the proposal (even when granted an opportunity to respond). Under such circumstances, we have determined that the appropriate method for resolving this evidentiary dispute is through a referral to an ALJ for a fact finding hearing.

is directed to forward that settlement document to the Board. After issuance of the recommendation (or the submission of a settlement document), the parties should advise the Board of their respective positions regarding the Own Motion matters. Thereafter, the Board will proceed with its review.

IT IS SO ORDERED.

Entered at Salem, Oregon on January 15, 2004