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In the Matter of the Compensation of  
**FREDRICK C. JOHNSON, Claimant**  
Own Motion No. 04-0266M  
INTERIM OWN MOTION ORDER POSTPONING ACTION ON REVIEW OF  
CARRIER CLOSURE  
Malagon Moore et al, Claimant Attorneys  
SAIF Corporation, Insurance Carrier

Reviewing Panel: Members Langer and Biehl.

Claimant requests review of the SAIF Corporation's May 6, 2004 Notice of Closure, as corrected on May 12, 2004, that: (1) declared claimant's condition medically stationary as of April 7, 2004; (2) awarded temporary disability benefits from December 10, 2001 through April 7, 2004; and (3) awarded no permanent disability for his "post-aggravation rights" new/omitted medical condition ("right knee osteoarthritis status post right total knee arthroplasty"). Claimant contends that he is entitled to permanent disability for the "post-aggravation rights" new medical condition ("right knee osteoarthritis status post right total knee arthroplasty") and requests the appointment of a medical arbiter to evaluate his permanent impairment.

FINDINGS OF FACT

On July 8, 1971, claimant sustained a compensable right knee injury. Claimant's aggravation rights have expired.

On October 30, 2001, we authorized the reopening of claimant's claim for a "worsening" of his previously accepted condition. Subsequently, SAIF voluntarily reopened claimant's claim for a "post-aggravation rights" new medical condition ("right knee osteoarthritis status post right total knee arthroplasty") by filing a 3501 form. ORS 656.278(1)(b) (2001); ORS 656.278(5) (2001); OAR 438-012-0030.

On May 6, 2004, as corrected on May 12, 2004, SAIF issued an Own Motion Notice of Closure that awarded no permanent disability benefits for the "post-aggravation rights" new/omitted medical condition.

Claimant has requested review of SAIF's May 2004 Notice of Closure. Among other issues, claimant asserts entitlement to permanent disability for a

“post-aggravation rights” new medical condition and seeks the appointment of a medical arbiter.

### CONCLUSIONS OF LAW AND OPINION

Claimant requests review of SAIF’s closure of his claim based on his disagreement with the impairment findings used to rate his disability. In addition, claimant requests the appointment of a medical arbiter. Based on the following reasoning, we grant claimant’s request.

In *Edward A. Miranda*, 55 Van Natta at 794, we reviewed ORS 656.278(1)(b), (2)(d), and (6) (2001) and concluded that a medical arbiter evaluation is available when, on Board review of an Own Motion claim closure, a claimant objects to the impairment findings used to rate impairment regarding “post-aggravation rights” new and/or omitted medical conditions and requests appointment of a medical arbiter. Consistent with our authority under ORS 656.278(6) (2001) to “prescribe a process to be followed if the worker objects to the claim closure,” we issued an interim order referring the matter to the Director to appoint a medical arbiter or arbiter panel. Following the arbiter examination and report, we explained that we would implement a supplemental briefing schedule to allow the parties to present their written positions regarding the effect, if any, the arbiter’s report had on claimant’s request for Board review of the closure notice.

Here, the claim was reopened for the processing of “post-aggravation rights” new medical conditions. ORS 656.278(1)(b) (2001); OAR 438-012-0055. Claimant requested Board review of that closure, objected to the impairment findings used in rating his disability at the time of closure, and requested appointment of a medical arbiter. In accordance with the *Miranda* holding, claimant is entitled to an evaluation of permanent disability attributable to his “post-aggravation rights” new medical conditions by a medical arbiter.<sup>1</sup>

Therefore, consistent with the procedures set forth in *Miranda*, we postpone our review of the Own Motion claim closure pending receipt of a medical arbiter’s

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<sup>1</sup> We note that to the extent SAIF’s May 6, 2004 closure pertains to a “worsened” condition claim under ORS 656.278(1)(a) (2001), claimant is not entitled to a referral for an arbiter examination because he is not entitled to a permanent disability award for a “worsened” condition claim. *Clarence R. Wikel*, 55 Van Natta 1329 (2003); *Jimmy O. Dougan*, 54 Van Natta 1213, 1231, *on recon* 54 Van Natta 1552, 1554 (2002).

report. We also refer the claim to the Director to appoint a medical arbiter. The parties shall provide the Director with whatever information the Director deems necessary to assist the medical arbiter, including identification of the accepted “post-aggravation rights” new medical condition (right knee osteoarthritis status post right total knee arthroplasty), the only condition for which claimant is entitled to a rating of permanent disability benefits under ORS 656.278(1)(b) (2001) and ORS 656.278(2)(d) (2001).<sup>2</sup>

Following completion of the medical arbiter process, the parties shall provide written notification to the Board, along with copies of the medical arbiter report. Thereafter, a supplemental briefing schedule will be implemented to allow the parties an opportunity to address the effect, if any, these documents have on claimant’s request for review of the closure notice. After completion of that schedule, we will proceed with our review.

IT IS SO ORDERED.

Entered at Salem, Oregon on July 22, 2004

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<sup>2</sup> The Appellate Review Unit (ARU) is requested to provide the Board with a copy of the entire written record (including any cover letter or questions to the arbiter from ARU) that it forwards to the medical arbiter.