
In the Matter of the Compensation
ROGER D. HOUSER, Claimant
Own Motion Nos. 03-0337M; 03-0338M
OWN MOTION ORDER
Claimant Unrepresented
Norman Cole, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Lowell and Biehl.

The SAIF Corporation has submitted claimant's request for reopening of either one of his Own Motion claims for a "post-aggravation rights" new or omitted medical condition ("psychological condition"). *See* ORS 656.278(1)(b) (2001). Claimant's aggravation rights under his 1976 and 1977 injury claims have expired. SAIF opposes claim reopening, contending that claimant's new or omitted medical condition is not compensably related to either of claimant's previously accepted claims. We deny claimant's request for Own Motion relief.

FINDINGS OF FACT

We adopt the "Findings of Fact" contained in the ALJ's Own Motion Recommendation on Reconsideration. In addition, we offer the following summary of the procedural history of the case.

On September 24, 2003, we referred this matter to the Hearings Division for an evidentiary hearing. On October 1, 2003, notice of a hearing set for December 19, 2003 was mailed to claimant, the employer, and SAIF. The hearing notice was mailed to the same Post Office box address to which the Board had previously sent claimant correspondence and from which the Board had subsequently received claimant's response.

A hearing convened on December 19, 2003. Claimant was not present, nor was anyone else on his behalf. On January 15, 2004, the ALJ issued an "Own Motion Recommendation," recommending that we deny claimant's request for "Own Motion" reopening of the 1976 or the 1977 claim.¹ Copies of the ALJ's recommendation were mailed to claimant (at the same address as the Board's prior

¹After receiving the ALJ's Own Motion Recommendation on Reconsideration, the Board implemented a briefing schedule regarding the Own Motion matter. Having received the parties' responses, we proceed with our review based on the record developed at the hearing and the parties' written arguments.

correspondence to claimant, as well as the notice of the hearing), the employer, and SAIF.

On February 20, 2004, claimant contended that he had not received notice of the hearing or a copy of the ALJ's recommendation. Claimant requested an explanation regarding why he was not notified of the scheduled hearing or the ALJ's recommendation.

CONCLUSIONS OF LAW AND OPINION

As a preliminary matter, we address claimant's contention regarding his alleged failure to receive actual notice of the hearing or a copy of the ALJ's "Own Motion Recommendation." We interpret claimant's contention as a request for a further hearing. Based on the following reasoning, we conclude that referral for an additional hearing is not warranted.

Several documents were mailed to all parties on the dates they issued.² Claimant's copies were mailed to his Portland Post Office Box address, including: (1) the Board's staff's August 7, 2003 letter (seeking claimant's position in response to SAIF's Own Motion Recommendation) to which claimant responded on August 18, 2003; (2) the Board's September 24, 2003 Own Motion Order Referring for Fact Finding Hearing; (3) the Board's October 1, 2003 Notice of Hearing; and (4) The ALJ's January 15, 2004 Own Motion Recommendation. Claimant's copies were mailed to the same address that claimant provided as a return address in his February 20, 2004 letter to the Board.

Claimant does not contend that the hearing notice or the recommendation were mailed to an incorrect address. Moreover, none of the documents mailed to claimant were returned as undeliverable.³ These circumstances strongly support a conclusion that the notice of hearing and the ALJ's order were properly mailed to claimant.

Consequently, we are persuaded that claimant received these documents "in the regular course of the mail." See ORS 40.135(1)(q). *Edward J. Demille*, 47 Van Natta 91, 93 (1995). Accordingly, we also conclude that claimant received

²There is no contention that SAIF or the employer did not receive copies of the documents in question.

³Furthermore, claimant responded to our August 7, 2003 letter, confirming that he has received correspondence mailed to his Post Office box address.

timely notice of the hearing. *See, e.g., Joyce E. Mitts*, 42 Van Natta 972 (1990) (where current address was not provided to the Board, and the Board's order was mailed to the address provided and was not returned as undeliverable, the order was properly mailed to all parties and was final).

Under such circumstances, we decline to again refer this matter for another hearing. *See* OAR 438-012-0040(3); *Douglas L. Bechtold*, 55 Van Natta 4249 (2003). In other words, particularly considering the lack of an adequate reason for claimant's failure to appear at the previously scheduled hearing, we decline to further delay review of this matter.⁴ Finally, we consider the previously developed record sufficient to address the compensability of the claimant's disputed claims.

On the merits of the claims, we adopt the reasoning and conclusion contained in the ALJ's "Own Motion Recommendation." In other words, we find that the record does not establish a compensable connection between the accepted 1976 or 1977 injuries and the claimed psychological condition. *See* ORS 656.005(7)(a)(A). *See Albany General Hospital v. Gasperino*, 113 Or App 411 (1992) (condition or need for treatment that is directly caused by an industrial accident is analyzed under a material contributing cause standard; condition or need for treatment that is caused by a compensable condition is analyzed under the major contributing cause standard as a consequential condition).

Consequently, claim reopening of claimant's 1976 or 1977 claim under ORS 656.278(1)(b) is not warranted. Accordingly, we deny claimant's request for Own Motion relief. *See* ORS 656.278(1)(b) (2001).⁵

IT IS SO ORDERED.

Entered at Salem, Oregon on June 2, 2004

⁴We note that SAIF opposes any reconvening of a hearing.

⁵We are mindful that claimant has requested Own Motion relief without benefit of legal representation. Under these circumstances, claimant may wish to consult the Workers' Compensation Ombudsman, whose job it is to assist injured workers in such matters. He 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