

In the Matter of the Compensation of
STANLEY R. SKINNER, Claimant

Own Motion No. 04-0173M

INTERIM OWN MOTION ORDER POSTPONING ACTION ON REVIEW OF
CARRIER CLOSURE

John C Dewenter, Claimant Attorneys
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Reviewing Panel: Members Biehl and Lowell.

Claimant requests review of the SAIF Corporation's March 4, 2004 Notice of Closure regarding a "post-aggravation rights" new or omitted medical condition claim ("degenerative disc disease L2-3 and L3-4 and spinal stenosis L2-3 and L3-4") that: (1) did not award permanent disability for his "post-aggravation rights" new or omitted medical condition claim ("degenerative disc disease L2-3 and L3-4 and spinal stenosis L2-3 and L3-4"); and (2) did not award temporary disability compensation. Claimant requests: (1) the appointment of a medical arbiter to evaluate his permanent impairment; and (2) a temporary disability award from October 11, 2002 through March 4, 2004

FINDINGS OF FACT

On August 28, 1973, claimant sustained a compensable low back injury, which SAIF accepted as a disabling injury claim. Claimant's aggravation rights have expired.

Subsequently, SAIF voluntarily reopened claimant's claim for the "post-aggravation rights" new medical condition ("degenerative disc disease L2-3 and L3-4 and spinal stenosis L2-3 and L3-4"). ORS 656.278(1)(b) (2001); ORS 656.278(5) (2001); OAR 438-012-0030.

On March 4, 2004, an Own Motion Notice of Closure did not award permanent disability benefits for the "post-aggravation rights" new/omitted medical conditions.

Claimant has requested review of SAIF's March 2004 Notice of Closure. In addition to seeking the appointment of a medical arbiter, claimant requests a permanent partial or permanent total disability award for his "post-aggravation rights" new or omitted medical conditions.

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 appointment of a medical arbiter. Based on the following reasoning, we grant claimant's request.

In *Edward A. Miranda*, 55 Van Natta 784 (2003), 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 processing of a "post-aggravation rights" new medical condition claim. 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.

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 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 conditions (degenerative disc disease L2-3 and L3-4 and spinal stenosis L2-3 and L3-4), the only conditions 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).¹

¹The Appellate Review Unit (ARU) is requested to provide the Board with a copy of the entire written record (including any cover letter or questions from ARU) that it forwards to the medical arbiter.

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.²

IT IS SO ORDERED.

Entered at Salem, Oregon on June 4, 2004

²Our review of claimant's temporary disability award shall be deferred pending the receipt of the medical arbiter's report.