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In the Matter of the Compensation of  
**KENDRICK T. MANNING, Claimant**  
Own Motion No. 04-0198M  
OWN MOTION ORDER  
Claimant Unrepresented  
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Biehl and Langer.

The SAIF Corporation has submitted claimant's request for claim reopening based on a worsening of his accepted low back condition. ORS 656.278(1)(a) (2001). Claimant's aggravation rights have expired. SAIF opposes reopening, contending that claimant's compensable condition does not require any medical treatment that qualifies his claim for reopening. Based on the following reasoning, we deny reopening.

FINDINGS FOR FACT

In February 2004, claimant sought medical treatment for low back pain. Dr. Takacs, claimant's attending physician, opined that claimant's work injury was the major contributing cause of his current need for treatment. Noting that claimant was working at his "full occupational duties," Dr. Takacs prescribed an epidural injection, an increase in the use of anti-inflammatories and periodic osteopathic manipulation. (Ex. 7).

In April 2004, claimant attended an insurer-arranged medical examination (IME) with Dr. Wells, who reported that claimant had successfully continued to perform his regular duties with periodic exacerbation of his chronic low back strain which have been treated successfully with manipulative procedures. Dr. Wells further noted that there was no surgical procedure or hospitalization that would significantly "decrease the vulnerability or increase his work capacity." Observing that claimant was not currently under curative care, Dr. Wells stated that, if claimant's symptoms increased, epidural steroids or facet joint injections would be recommended.

CONCLUSIONS OF LAW AND OPINION

Among the requirements for claim reopening under ORS 656.278(1)(a) (2001), there must be a worsening that requires hospitalization, surgery (either inpatient or outpatient), or other curative treatment prescribed in lieu of

hospitalization that is necessary to enable the worker to return to work. In *Larry D. Little*, 54 Van Natta 2536 (2002), we concluded that if any one of the three qualifying medical treatments listed in ORS 656.278(1)(a) (2001) is satisfied, a “worsening condition” claim meets the medical treatment requirement for reopening in Own Motion. In *Little*, 54 Van Natta at 2542, we defined the three qualifying medical treatments listed in ORS 656.278(1)(a) (2001) in the following manner: (1) “Surgery” is defined as an invasive procedure undertaken for a curative purpose that is likely to temporarily disable the worker; and (2) “hospitalization” is defined as a nondiagnostic procedure that requires an overnight stay in a hospital or similar facility.

We also found that the third type of qualifying treatment required establishment of three elements: (1) curative treatment (treatment that relates to or is used in the cure of diseases, tends to heal, restore to health, or to bring about recovery); (2) prescribed (directed or ordered by a doctor) in lieu of (in the place of or instead of) hospitalization; and (3) that is necessary (required or essential) to enable (render able or make possible) the injured worker to return to work. *Little* at 54 Van Natta 2546.

Whether a worsening of the compensable injury requires hospitalization, inpatient or outpatient surgery, or “other curative treatment prescribed in lieu of hospitalization that is necessary to enable the injured worker to return to work” presents a medical question that must be addressed by medical evidence. In other words, we cannot infer that a treatment involves hospitalization, inpatient or outpatient surgery, or “other curative treatment prescribed in lieu of hospitalization that is necessary to enable the injured worker to return to work.” *SAIF v. Calder*, 157 Or App 224, 227-28 (1998) (“the Board is not an agency with specialized medical expertise entitled to take official notice of technical facts within its specialized knowledge”); *Terry L. Smith*, 55 Van Natta 2763 (2003). This question must be answered by persuasive medical evidence.

Based on our review, the record does not establish that claimant’s condition worsened requiring hospitalization, surgery or other curative treatment that was prescribed in lieu of (instead of or in place of) hospitalization that was necessary to enable him to return to work. ORS 656.278(1)(a) (2001); *Larry D. Little*, 54 Van Natta at 2546. No physician recommended surgery or hospitalization. Nor is there any evidence that the prescription medication or epidural/facet joint injections constituted “other curative treatment prescribed in lieu of hospitalization that is necessary to enable the injured worker to return to work.” See *Stephen Jackson*, 55 Van Natta 2421, 2422 (2003); *Mark R. Gescher*, 55 Van

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Natta 1956 (2003) (ORS 656.278(1)(a) (2001) not satisfied where, although treatment (prescription medication) was arguably curative and necessary to enable the claimant to return to work, there was no evidence that the treatment was prescribed in lieu of hospitalization).

Under these circumstances, we conclude that this Own Motion claim for a worsening of claimant's previously accepted conditions (low back strain) does not satisfy the criteria set forth in ORS 656.278(1)(a) (2001) to qualify this worsening claim for reopening.<sup>1</sup>

Consequently, we deny the reopening of the Own Motion claim.<sup>2</sup>

IT IS SO ORDERED.

Entered at Salem, Oregon on June 16, 2004

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<sup>1</sup>If a party obtains medical evidence that addresses the "curative treatment prescribed in lieu of hospitalization that is necessary to enable the injured worker to return to work" component of the statutory standard that is lacking from the current record, that party may request reconsideration of our decision. However, because our authority to reconsider this decision expires within 30 days after the mailing date of the Own Motion Order, the reconsideration request along with any additional medical evidence must be filed within that 30-day period. OAR 438-012-0065(2).

<sup>2</sup>Finally, inasmuch as claimant is unrepresented, he 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