
In the Matter of the Compensation of
VICTOR R. O'NEILL, Claimant
Own Motion No. 03-0533M
OWN MOTION ORDER REFERRING FOR CONSOLIDATED HEARING
Charles Robinowitz, Claimant Attorneys
Michael G Bostwick LLC, Defense Attorneys

Reviewing Panel: Members Biehl and Langer.

Claimant has requested Own Motion relief seeking: (1) temporary disability compensation; (2) acceptance of a “post-aggravation rights” new medical condition claim; (3) permanent total disability benefits; (4) penalties; and (5) the provision of medical devices.

In response, the insurer contends that: (1) claimant is not entitled to temporary disability benefits as there has been no attending physician's time loss authorization; (2) it has 90 days to process claimant's “post-aggravation rights” new medical condition claim; (3) the issue regarding entitlement to permanent total disability benefits is premature; (4) because temporary disability compensation is not due, penalties cannot be awarded; and (5) jurisdiction regarding the provision of medical devices resides with the Workers' Compensation Division and not with the Workers' Compensation Own Motion Board.

In reply to the employer's response, claimant asserts that: (1) he has requested a hearing with the Hearings Division regarding a “defacto” denial of his medical services and the “post-aggravation rights” new medical condition claim (WCB Case No. 04-00559); (2) he is entitled to temporary disability because he has an attending physician's authorization; and (3) once he is provided with the necessary forms for the medical devices, he will complete them and submit them to the employer for further processing.

A hearing regarding claimant's request is scheduled for April 22, 2004 before an Administrative Law Judge (ALJ). (WCB Case No. 04-00599).

Considering the complexity of the potential medical, factual, and legal issues arising from this claim (and its interrelationship with those currently pending before the Hearings Division), we conclude that it would be appropriate to

consolidate the Own Motion matter with the pending litigation.¹ At that consolidated hearing, the parties are asked to address following points and authorities: ORS 656.327; ORS 656.704(3); ORS 656.278(1)(b) (2001); OAR 438-012-0030; OAR 438-012-0055; *Ronald J. Reynolds*, 55 Van Natta 3597 (2003); *Aurelio R. Rivas*, 55 Van Natta 2530 (2003); *Donald R. Phillips*, 55 Van Natta 735 (2003).

The consolidated proceeding may be conducted in any manner that the ALJ deems achieves substantial justice. Following the consolidated proceeding, the ALJ shall make findings of fact and conclusions of law regarding the issues arising from this Own Motion matter.

In addition to an order in WCB Case No. 04-00599, the ALJ is directed to forward to the Board a separate, unappealable recommendation with respect to any Own Motion matters and a copy of the order issued in WCB Case No. 04-00599. In addition, if the matter is resolved by stipulation or Disputed Claim Settlement, the ALJ is directed to submit a copy of the settlement document to the Board. After issuance of the recommendation and order (or settlement document), the parties should advise the Board of their respective positions regarding the Own Motion matters.

IT IS SO ORDERED.

Entered at Salem, Oregon on March 17, 2004

¹ Claimant states that the "post-aggravation rights" new medical condition claim was initiated on December 2, 2002. Inasmuch as the claim was filed prior to September 1, 2003, the amendments to the Board's Own Motion rules are not applicable. See OAR 438-012-0018; *Keith A. Broeckel*, 55 Van Natta 3572 (2003). Consequently, the requirement that a carrier issue a denial of a "post-aggravation rights" new or omitted medical condition claim, with a notice of appeal to the Hearings Division, when it is contesting the compensability/responsibility of the claim does not apply. OAR 438-012-0070; OAR 438-012-0075. As such, we retain original authority to refer this claim for a fact finding hearing. See OAR 438-012-0040(3); *Andrew B. Speck*, 55 Van Natta 103 (2003). Therefore, the ALJ is directed to issue an unappealable Own Motion recommendation pursuant to OAR 438-012-0040(3) (1995).