
In the Matter of the Compensation of
JAMES M. KLEFFNER, Claimant
Own Motion No. 04-0100M
OWN MOTION ORDER
Welch Bruun & Green, Claimant Attorneys
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

The SAIF Corporation has submitted claimant's request for claim reopening based on a worsening of his accepted bilateral knee 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 find that claimant's claim does not qualify for reopening.

FINDINGS FOR FACT

In December 2003, claimant sought medical treatment for bilateral knee and ankle pain. Dr. Bolstad, claimant's attending physician, diagnosed bilateral knee and ankle pain. Dr. Bolstad released claimant to modified work. (Ex. 7).

In January 2004, Dr. Bolstad reported that no diagnostic tests had been performed as she was awaiting notification regarding the claim status. She also opined that claimant had suffered a worsening in that he had a work restriction of no lifting greater than 35 pounds. (Ex. 12). Dr. Bolstad also noted that it was uncertain whether claimant's current condition would require hospitalization or further surgery. (Ex. 13).

In February 2004, claimant attended an insurer-arranged medical examination (IME) with Dr. James, who reported that claimant's current knee condition had not been completely evaluated because no diagnostic studies had been made. Finding no worsening of claimant's bilateral chondromalacia patellae, minimal crepitus, and some non-objective diffuse tenderness, Dr. James concluded that claimant could perform his regular job and that his chondromalacia patella was medically stationary. Dr. James strongly recommended that claimant undergo imaging studies and diagnostic testing before making any further recommendations or evaluations.

CONCLUSIONS OF LAW AND OPINION

Pursuant to ORS 656.278(1)(a) (2001), there are three requirements for the reopening of an Own Motion claim for a worsening of a compensable injury. First, the worsening must result in the partial or total inability of the worker to work. Second, the worsening must require 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. Third, the worker must be in the work force at the time of disability as defined under the criteria in *Dawkins v. Pacific Motor Trucking*, 308 Or 254 (1989).¹ *James J. Kemp*, 54 Van Natta 491 (2002).

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. 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. The third type of qualifying treatment requires establishment of three elements: (a) 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); (b) prescribed in lieu of (in the place of or instead of) hospitalization; and (c) that is necessary (required or essential) to enable the injured worker to return to work. *Id.* at 54 Van Natta 2542, 2546.

Furthermore, we held that the issue of 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 persuasive medical evidence in the record. *Little*, 54 Van Natta at 2542-43. In other words, we cannot infer that a treatment involves one of the above medical treatment requirements under ORS 656.278(1)(a) (2001). *SAIF v. Calder*, 157 Or App 224, 227-28 (1998); *Little*, 54 Van Natta at 2543; *Kemp*, 54 Van Natta at 509.

¹ In *Dawkins*, the Court concluded that a claimant is in the work force at the time of disability if he or she is: (1) engaged in regular gainful employment; or (2) not employed, but willing to work and seeking work; or (3) not employed, but willing to work and is not seeking work because a work-related injury has made such efforts futile. *Dawkins v. Pacific Motor Trucking* 308 Or at 258.

Here, claimant argues that his compensable bilateral knee condition has “objectively” worsened and that his physical restrictions are “greater than previously awarded.” He further contends that curative treatment has been proposed, but not “formally set up and approved at this point.” However, as explained above, in order for a “worsened” condition claim to be entitled to be reopened under ORS 656.278(1)(a) (2001), the worsening must require 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.

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 has recommended surgery or hospitalization. Nor has there been any medical treatment recommended that constitutes “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 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).²

Accordingly, the request for claim reopening for a worsened condition under ORS 656.278(1)(a) (2001) is denied.

IT IS SO ORDERED.

Entered at Salem, Oregon on May 5, 2004

² If a party obtains medical evidence that addresses the statutorily required medical treatment (*i.e.*, hospitalization, surgery or curative treatment prescribed in lieu of hospitalization that is necessary to enable the injured worker to return to work) 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 must be filed within that 30-day period. OAR 438-012-0065(2).