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In the Matter of the Compensation of  
**JOSEPH D. HAPKA, Claimant**  
Own Motion No. 03-0390M  
OWN MOTION ORDER REFERRING FOR CONSOLIDATED HEARING  
Michael A Bliven, Claimant Attorneys  
Jeff Gerner, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Lowell and Kasubhai.

The SAIF Corporation has submitted a “Carrier’s Own Motion Recommendation,” indicating that claimant seeks reopening of his 1984 claim for “post-aggravation rights” new medical conditions (“weakened rectal sphincter; urinary obstruction; L5-S1 disc herniation/bulge; L4-5 disc herniation/bulge; scarring/effacement L5 nerve root; L3-4 disc herniations with spurring; L3-4 status, left facetectomy and hemilaminectomy; L2-3 degenerative hypertrophic changes; facet joints/spinal cord injury; thoracic disc; spinal cord spasticity; facet degenerative changes at L3-4-5-S1; status post laminectomy L3, L5, S1 on left side; status post sensory rhizotomy at L5; cervical disc disease; prostatic hypertrophy; neurogenic bladder; spastic bladder; atonic bladder; nervous/anxiety; epidural scar L2-3 interspace with left nerve root compression; cicatrix with proliferic fibrosis, epidural region L2-3; degenerative scoliosis at the lower lumbar apophyseal joints; sever multilateral degenerative disc disease with evidence of multi-level epidural scarring and probable arachnoiditis; lumbar adhesive arachnoiditis; lumbosacral strain/sprain; adjacent multiple segment syndrome lumbar spine; myofascial pain disorder lumbar spine; pain disorder associated with both psychological factors and a general medical condition; lumbar enthesopathy; lumbar radiculitis; degenerative lumbar disc disease; lumbar intervertebral disc disorder; failed back syndrome lumbar spine; adjustment disorder with anxiety/anxiety disorder”). ORS 656.278(1)(b) (2001). SAIF recommends against reopening, contending, among other reasons, that claimant’s current conditions are either not causally related to the compensable conditions or are already encompassed within the previous acceptances.

Claimant sustained a compensable injury on August 15, 1984. Claimant’s aggravation rights have expired. Claimant requested a hearing with the Hearing Division raising, among other issues, a *de facto* denial. (WCB Case No. 02-02144).

A hearing on claimant’s hearing request was convened on August 26, 2003. Following the hearing, Administrative Law Judge (ALJ) Davis submitted a letter to the parties, requesting claimant’s position regarding discovery issues and a continued hearing.

In response to ALJ Davis' letter, claimant requests that the Own Motion matters be consolidated with the pending hearing. SAIF does not oppose claimant's request.<sup>1</sup>

Because this is a "pre-September 1, 2003" "post-aggravation rights" new medical condition claim and considering the potential complexities of the medical, legal, and factual issues arising from this dispute, we conclude that it would be appropriate to consolidate the Own Motion matter concerning the "post-aggravation rights" new or omitted medical condition claim with the pending litigation. *Jesse C. Day*, 54 Van Natta 2382 (2002); *Sheila R. Hedrick*, 54 Van Natta 2354 (2002). That consolidated proceeding may be conducted in any manner that the ALJ deems achieves substantial justice.

In addition to an order in WCB Case No. 02-2144, 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. 02-02144.<sup>2</sup> In the recommendation, the ALJ shall make findings of fact and conclusions of law regarding the issues raised in claimant's request for Own Motion relief. 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 November 15, 2004

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<sup>1</sup>SAIF states that the "post-aggravation rights" new medical condition claim was received on August 6, 2001. Inasmuch as the claim was apparently 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 would 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). Therefore, the ALJ is directed to issue an unappealable Own Motion recommendation pursuant to OAR 438-012-0040(3) (2002).

<sup>2</sup> If SAIF subsequently issues a Form 3501, announcing that it is voluntarily reopening this currently disputed claim, the parties should notify the Board. In the event that the issuance of the voluntary claim reopening form comes to our attention, we will consider dismissal of this Own Motion matter. *See Jesse C. Day*, 55 Van Natta 2366, 2369-70 (2003).