
In the Matter of the Compensation of
PAUL A. FRANICH, Claimant
Own Motion No. 04-0395M
OWN MOTION ORDER
Unrepresented Claimant
Liberty NW Ins Corp, Insurance Carrier

Reviewing Panel: Members Biehl and Lowell.

The insurer has submitted claimant's request for claim reopening for his previously accepted low back condition. ORS 656.278(1)(a) (2001). Claimant's aggravation rights have expired. The insurer opposed reopening, contending, among other issues, that claimant's compensable condition does not require any medical treatment that qualifies his claim for reopening. Based on the following reasoning, we deny claim reopening.

FINDINGS OF FACT

On July 23, 2004, claimant sought treatment from Dr. Burns, his attending physician, for lumbar, sacroiliac, buttock, and leg pain complaints. Noting a decreased lumbar flexion with positive straight leg raising, Dr. Burns recommended rest and medication. (Ex. 3).

On August 2, 2004, Dr. Burns completed a physical capacity analysis worksheet, which indicated that claimant had "no limitations and can return to his/her regular job." (Ex. 4). Additionally, he noted that claimant had improved range of motion, but was still experiencing left S-1 joint and left upper buttock pain. Dr. Burns further noted that claimant's condition was aggravated by sitting for more than 15 to 20 minutes at one time. (Ex. 5).

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. The third type of qualifying treatment requires 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*, 54 Van Natta at 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 recommended prescribed medication 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 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).¹

Under these circumstances, we conclude that this Own Motion claim for a worsening of claimant's previously accepted condition (lumbar strain) does not satisfy the criteria set forth in ORS 656.278(1)(a) (2001) to qualify this worsening claim for reopening.²

Consequently, we deny the reopening of the Own Motion claim.³

IT IS SO ORDERED.

Entered at Salem, Oregon on November 26, 2004

¹ Additionally, the insurer contended that claimant's compensable condition has not resulted in an "inability to work." ORS 656.278(1)(a) (2001). In this particular case, this matter need not be addressed because even if the "inability to work" issue was found in claimant's favor, the record would still be insufficient to support a claim reopening under ORS 656.278(1)(a) (2001).

² If a party obtains medical evidence that addresses the requisite medical treatment component and "inability to work" requirement, that party may request reconsideration of our decision. ORS 656.278(1)(a) (2001). 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).

³ 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