
In the Matter of the Compensation of
STEVEN R. EDMISTON, Claimant
Own Motion No. 05-0102M
INTERIM OWN MOTION ORDER POSTPONING ACTION ON REVIEW OF
CARRIER CLOSURE
Cary et al, Claimant Attorneys
SAIF Corporation, Defense Attorneys

Reviewing Panel: Members Lowell and Kasubhai.

Claimant requests review of the February 7, 2005 Notice of Closure that awarded 1.5 percent (4.8 degrees) unscheduled permanent disability, 5 percent (7.5 degrees) scheduled permanent disability (left leg), and 3 percent (4.05 degrees) scheduled permanent disability (right foot) for his “post-aggravation rights” new/omitted medical conditions (“L5-S1 disc herniation and S1 radiculopathy”). Claimant requests the appointment of a medical arbiter to evaluate his permanent impairment.

FINDINGS OF FACT

On September 5, 1988, claimant sustained a compensable low back injury. Claimant’s aggravation rights have expired.

On November 11, 2003, the SAIF Corporation voluntarily reopened claimant’s claim for a “post-aggravation rights” new medical conditions (“L5-S1 disc herniation and S1 radiculopathy”). ORS 656.278(1)(b) (2001); ORS 656.278(5) (2001); OAR 438-012-0030.

On February 7, 2005, SAIF closed the claim with an Own Motion Notice of Closure that awarded 1.5 percent (4.8 degrees) unscheduled permanent disability, 5 percent (7.5 degrees) scheduled permanent disability (left leg), and 3 percent (4.05 degrees) scheduled permanent disability (right foot) for his “post-aggravation rights” new/omitted medical conditions (“L5-S1 disc herniation and S1 radiculopathy”).

Claimant has requested review of the February 2005 Notice of Closure. Claimant asserts entitlement to additional permanent disability for “post-aggravation rights” new medical condition and seeks the appointment of a medical arbiter.

CONCLUSIONS OF LAW AND OPINION

Claimant requests review of SAIF's closure of his claim based on his disagreement with the impairment findings used to rate his disability. In addition, claimant requests appointment of a medical arbiter. *See John S. Ross*, 56 Van Natta 3369 (2004); *Edward A. Miranda*, 55 Van Natta 784 (2003)

Consistent with the procedures set forth in *Miranda*, we postpone our review of the Own Motion claim closure pending receipt of a medical arbiter's report. We also refer the claim to the Director to appoint a medical arbiter. The parties shall provide the Director with whatever information the Director deems necessary to assist the medical arbiter, including identification of the accepted "post-aggravation rights" new medical condition (L5-S1 disc herniation and S1 radiculopathy), the only condition for which claimant is presently entitled to a rating of permanent disability benefits under ORS 656.278(1)(b) (2001) and ORS 656.278(2)(d) (2001).¹

Following completion of the medical arbiter process, the parties shall provide written notification to the Board, along with copies of the medical arbiter report. Thereafter, a supplemental briefing schedule will be implemented to allow the parties an opportunity to address the effect, if any, these documents have on claimant's request for review of the closure notice. After completion of that schedule, we will proceed with our review.

IT IS SO ORDERED.

Entered at Salem, Oregon on April 20, 2005

¹ The Appellate Review Unit (ARU) is requested to provide the Board with a copy of the entire written record (including any cover letter or questions to the arbiter from ARU) that it forwards to the medical arbiter.