

In the Matter of the Compensation of
WILLIAM F. DAVIS, Claimant

Own Motion No. 04-0337M

OWN MOTION ORDER

Ransom Gilbertson Martin et al, Claimant Attorneys
Charles Edelson, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

The SAIF Corporation has submitted claimant's request for reopening of his "worsening" claim for his previously accepted cervical condition. ORS 656.278(1)(a) (2001). Claimant's aggravation rights have expired. SAIF 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

Claimant was compensably injured on August 2, 1979. SAIF accepted a cervical strain and degenerative disease of the cervical spine with spinal stenosis and C6 and C7 radiculopathy. Claimant's aggravation rights expired on August 2, 1984.

In February 2004, claimant's attending physician, Dr. Drapiza, referred claimant to Dr. Narla for a neurological consultation to evaluate his chronic lumbar and cervical pain, and numbness and cramping in his legs. Dr. Narla ordered CT scans of the lumbar and cervical spines, which revealed multi-level degenerative changes in both spinal areas. (Exs. 4; 5; 6).

On March 9, 2004, Dr. Drapiza reported that claimant's current diagnosis was "spinal stenosis/spondylosis cervical." Submitted with the report was a document titled "Application for Long Term Disability Income Benefits," wherein Dr. Drapiza summarized claimant's recent treatment and noted that he was not hospitalized for this condition, nor was any surgery performed. Dr. Drapiza also noted that claimant was unable to work and should continue with chiropractic treatments. (Exs. 7; 8).

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*, 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. *Id.* at 2542. 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. *Id.* 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); *Little*, 54 Van Natta at

2546. Specifically, no physician recommended surgery or hospitalization.¹ (See Exs. 4; 7). Also, although continuing chiropractic treatments were recommended, no physician characterized those treatments as being curative or in lieu of hospitalization that were necessary to enable claimant to return to work.

Under these circumstances, we conclude that this Own Motion claim for a worsening of claimant's previously accepted conditions (cervical strain; degenerative disease of the cervical spine with spinal stenosis and C6 and C7 radiculopathy) 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.

IT IS SO ORDERED.

Entered at Salem, Oregon on February 23, 2005

¹ Additionally, SAIF contends that claimant was not in the work force at the time of the current disability. ORS 656.278(1)(a) (2001). In this particular case, this matter need not be addressed because even if the work force 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 "work force" 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).