
In the Matter of the Compensation of
JON L. CARLSON, Claimant
Own Motion No. 04-0403M
OWN MOTION ORDER
Malagon Moore et al, Claimant Attorneys
Charles Edelson, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Kasubhai and Lowell.

The SAIF Corporation submitted a “Carrier’s Own Motion Recommendation” against the reopening of claimant’s 1998 injury claim for a “worsening” of his previously accepted condition (“tear of anterior horn of lateral meniscus right knee and recurrent tear of posterior horn of medial meniscus right knee”) and a “post-aggravation rights” new or omitted medical condition (“right knee osteoarthritis”). *See* ORS 656.278(1)(a), (b) (2001).

Based on the following reasoning, we deny claim reopening under ORS 656.278(1)(a), (b) (2001).

“Worsened” Condition Claim

Claimant sustained a compensable right knee injury on May 4, 1998. Claimant’s aggravation rights have expired. SAIF issued a denial of claimant’s current condition on October 18, 2004, from which claimant requested a hearing with the Hearings Division. (WCB Case No. 04-07642).¹

Thereafter, claimant withdrew his pending request for hearing. On April 22, 2005, Administrative Law Judge (ALJ) Brown dismissed claimant’s hearing request. (WCB Case No. 04-07642). That order has not been appealed.

Based on the unappealed ALJ’s dismissal order, claimant’s current condition (on which his request for claim reopening under ORS 656.278(1)(a) (2001) rests) remains in denied status. As a result, we are not authorized to grant claimant’s current request for Own Motion relief. *See* ORS 656.278(1)(a) (2001).

¹ Additionally, SAIF contended that claimant’s compensable condition had not worsened requiring the requisite medical treatment nor resulting in an inability to work. ORS 656.278(1)(a) (2001). In this particular case, these matters need not be addressed because even if the “medical treatment” and “inability to work” issues were found in claimant’s favor, the claim would still not qualify for reopening under ORS 656.278(1)(a) (2001) for the reasons expressed above.

“Post-Aggravation Rights” New/Omitted Medical Condition Claim

SAIF also issued a denial regarding a “post-aggravation rights” new medical condition (“right knee osteoarthritis”), contending that it was not compensable. OAR 438-012-0070; OAR 438-012-0090. Claimant requested a hearing regarding that denial. On January 12, 2005, we deferred action on this Own Motion “claim reopening” matter pending the litigation before the Hearings Division. (WCB Case No. 05-00100).

Thereafter, claimant withdrew his request for hearing. On April 22, 2005, ALJ Brown issued an Order of Dismissal, dismissing claimant’s pending hearing request. (WCB Case No. 05-00100).² That order has not been appealed.

In light of the unappealed ALJ’s order, SAIF’s denial of claimant’s Own Motion claim for this “post-aggravation rights” new medical condition has become final. *See* OAR 438-012-0070. Consequently, as a matter of law, the denied condition is not compensable insofar as it pertains to claimant’s 1998 injury claim. *See James E. Daly, 57 Van Natta 978 (2005)*

Under such circumstances, we are not authorized to reopen the claim for the aforementioned “post-aggravation rights” new medical condition under ORS 656.278(1)(b) (2001).

Accordingly, these requests for claim reopening are denied.

IT IS SO ORDERED.

Entered at Salem, Oregon on June 6, 2005

² Under OAR 438-012-0001(4)(a) (2004), the ALJ’s order constitutes a “Proposed and Final Own Motion Order.” *See June J. Holmes, 57 Van Natta 136 (2005)*.