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In the Matter of the Compensation of  
**JON COLON, Claimant**  
Own Motion No. 04-0319M; 04-0293M  
OWN MOTION ORDER  
Ransom Gilbertson Martin et al, Claimant Attorneys  
Cummins Goodman et al, Defense Attorneys

Reviewing Panel: Members Langer and Kasubhai.

The self-insured employer submitted a “Carrier’s Own Motion Recommendation” against the reopening of claimant’s 1995 injury claim for a “worsening” of her previously accepted condition (“low back strain”) (WCB Case No. 04-0293M) and a “post-aggravation rights” new or omitted medical condition (“lumbar facet syndrome”) (WCB Case No. 04-0319M). *See* ORS 656.278(1)(a), (b) (2001). Claimant’s aggravation rights have expired.

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

“Worsened” Condition Claim

The employer issued a denial of claimant’s current condition on July 20, 2004, from which claimant requested a hearing with the Hearings Division. (WCB Case No. 04-05397).

Thereafter, claimant withdrew her pending request for hearing. On March 29, 2005, an Administrative Law Judge (ALJ) dismissed claimant’s hearing request. (WCB Case No. 04-05397). 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).<sup>1</sup>

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<sup>1</sup> On January 21, 1997, we approved the parties’ Claim Disposition Agreement (CDA), in which claimant released all rights to “non-medical service” benefits (including Own Motion benefits under ORS 656.278) under this 1995 claim.

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

The employer also issued a denial regarding a “post-aggravation rights” new medical condition (“lumbar facet syndrome”), contending that it was not compensable. OAR 438-012-0070; OAR 438-012-0090. Claimant requested a hearing regarding that denial. (WCB Case No. 04-05397).

Thereafter, claimant withdrew her request for hearing. On March 3, 2005, Administrative Law Judge (ALJ) issued an Order of Dismissal, dismissing claimant’s pending hearing request. (WCB Case No. 04-05397).<sup>2</sup> That order has not been appealed.

In light of the unappealed ALJ’s order, the employer’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 1995 injury claim. *See Richard D. Renish*, 56 Van Natta 1546 (2004).

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 May 12, 2005

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