
In the Matter of the Compensation of
LARRY A. SHULTZ, Claimant
Own Motion No. 05-0277M
OWN MOTION ORDER
Unrepresented Claimant
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 1991 injury claim for: (1) a worsening of his previously accepted bilateral leg condition; and (2) a “post-aggravation rights” new or omitted medical condition claim (“varicose veins in right lower leg”). See ORS 656.278(1)(a), (b) (2001). Claimant’s aggravation rights on that claim have expired.

Based on the following reasoning, we deny claim reopening.

“Worsened Condition”

Pursuant to ORS 656.278(1)(a) (2001), there are three requirements for the reopening of an Own Motion claim for a worsening of a compensable injury. First, the worsening must result in the partial or total inability of the worker to work. Second, the worsening must require 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. Third, the worker must be in the work force at the time of disability as defined under the criteria in *Dawkins v. Pacific Motor Trucking*, 308 Or 254 (1989). *James J. Kemp*, 54 Van Natta 491 (2002).

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. 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: (a) 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); (b) prescribed in lieu of (in the place of or instead of) hospitalization; and (c) that is necessary (required or essential) to enable the injured worker to return to work. *Id.* at 54 Van Natta 2542, 2546.

Furthermore, we held that the issue of 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 persuasive medical evidence in the record. *Little*, 54 Van Natta at 2542-43. In other words, we cannot infer that a treatment involves one of the above medical treatment requirements under ORS 656.278(1)(a) (2001). *SAIF v. Calder*, 157 Or App 224, 227-28 (1998); *Little*, 54 Van Natta at 2543; *Kemp*, 54 Van Natta at 509.

Here, on May 19, 2005, claimant sought treatment with Dr. Jackson, the emergency room physician, for pain and redness around a varicose vein in his right leg. Dr. Jackson recommended conservative treatment in the form of aspirin, elevation of the leg, and warm soaks. Claimant was referred to Dr. Hayes for a follow-up examination. (Ex. 8-2). Dr. Hayes’ treatment plan consisted of aspirin treatment. (Ex. 11-1).

Under such circumstances, 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 her to return to work. ORS 656.278(1)(a) (2001); *Larry D. Little*, 54 Van Natta at 2546. In other words, no physician recommended surgery or hospitalization. Nor is there any evidence that the aspirin therapy that was offered 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); *Little*, 54 Van Natta at 2547-48 (epidural steroid injections; no medical evidence that treatment constituted surgery, hospitalization, or “other curative treatment prescribed in lieu of hospitalization” that was “necessary to enable the injured worker to return to work”).

Accordingly, the request for claim reopening under ORS 656.278(1)(a) (2001) is denied.¹

“Post-aggravation rights” New or Omitted Medical Condition

On August 2, 2005, SAIF issued a denial regarding a “post-aggravation rights” new medical condition (“varicose veins in the right lower leg”). OAR 438-012-0070; OAR 438-012-0075; OAR 438-012-0090. No hearing has been requested regarding that denial.

SAIF’s denial of claimant’s Own Motion claim for the “post-aggravation rights” new medical condition has not been timely appealed. *See* OAR 438-012-0070. Consequently, as a matter of law, the denied condition is not compensable. *Clifford C. Hill, 57 Van Natta 300 (2005)*.

Under such circumstances, we are not authorized to reopen the claim for the “post-aggravation rights” new medical condition (“varicose veins in the right lower leg”) under ORS 656.278(1)(b) (2001). Accordingly, the request for claim reopening is denied.²

IT IS SO ORDERED.

Entered at Salem, Oregon on October 26, 2005

¹ Additionally, SAIF also contended that the current condition was not causally related to the previously accepted condition. ORS 656.278(1)(a) (2001). In this particular case, this matter need not be addressed because even if the “compensability” 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) for the reasons expressed above.

² 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