
In the Matter of the Compensation of
JAMES P. LARSON, Claimant
Own Motion No. 05-0300M
OWN MOTION ORDER
Unrepresented Claimant
Peggy J Ayles, Safeway Stores Inc, Insurer Carrier

Reviewing Panel: Members Lowell and Biehl.

The self-insured employer has submitted claimant's request for claim reopening based on a worsening of his accepted low back condition. ORS 656.278(1)(a) (2001). Claimant's aggravation rights have expired. The employer opposes reopening, contending that claimant's compensable condition does not require any medical treatment that qualifies his claim for reopening. Based on the following reasoning, we deny reopening.

FINDINGS FOR FACT

On February 10, 1981, claimant sustained a compensable low back injury. The claim was first closed on July 8, 1991. (Ex. 18). His aggravation rights expired July 8, 1996. ORS 656.273.

In June 2005, claimant sought medical treatment for low back pain. Noting that claimant was unable to perform his "full duty," Dr. Stutzman ordered diagnostic studies. (Ex. 44).

Following an MRI, Dr. Stutzman diagnosed "lumbar degenerative disease." She recommended physical therapy and released claimant from work. (Exs. 46, 47).

In response to an inquiry from the employer, Dr. Stutzman noted that the recommended treatment was to "attempt to cure." She explained that "strengthening musculature" it can reduce claimant's pain in order to return him to work. Dr. Stutzman further explained that because the "arthritis" cannot be cured, claimant's problems would be "persistent." (Ex. 49).

On August 22, 2005, the employer submitted its Carrier's Own Motion Recommendation against reopening for a "worsened" condition claim. The employer asserted that claimant's compensable condition did not require any medical treatment that qualified his claim for reopening.

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*, 54 Van Natta at 2542, 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.

We also found that the third type of qualifying treatment required 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. *Little*, 54 Van Natta 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 his to return to work. ORS 656.278(1)(a) (2001); *Larry D. Little*,

54 Van Natta at 2546. No physician recommended surgery or hospitalization. Nor is there any evidence that the physical 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”).

Under these circumstances, we conclude that this Own Motion claim for a worsening of claimant’s previously accepted conditions (low back strain and L4-5 disc herniation) does not satisfy the criteria set forth in ORS 656.278(1)(a) (2001) to qualify this worsening claim for reopening.^{1 2}

¹ If a party obtains medical evidence that addresses the requisite medical treatment component of the statutory standard that is lacking from the current record, 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).

² The record does not demonstrate that claimant has initiated a “post-aggravation rights” new medical condition claim. Thus, any consideration of “unclaimed” conditions would be premature. See ORS 656.267(3) (2001); ORS 656.278(1)(b) (2001). Instead, our decision is limited to a review of claimant’s worsening claim for his previously accepted cervical strain condition. Furthermore, our decision is premised on a finding that no hospitalization, surgery or other curative treatment prescribed in lieu of hospitalization that is necessary to enable claimant to return to work as required under ORS 656.278(1)(a) (2001) has been rendered or recommended for claimant’s accepted low back strain and L4-5 disc herniation. Under such circumstances, we are unable to authorize the reopening of claimant’s 1991 low back condition claim under ORS 656.278(1)(a) (2001).

If claimant wishes to initiate a new or omitted medical condition claim, he may request formal written acceptance of the claim from the employer. ORS 656.267(1). If the employer receives such a claim, it must process it according to the Board’s rules, which would include issuing a voluntary reopening notice (Form 3501) or submitting an Own Motion recommendation to the Board. See OAR 438-012-0020(1); OAR 438-012-0030; *Arvin D. Lal*, 55 Van Natta 816 (2003). Should claimant be dissatisfied with the employer’s response, he may seek Board Own Motion relief.

Consequently, we deny the reopening of the Own Motion claim.³

IT IS SO ORDERED.

Entered at Salem, Oregon on October 5, 2005

³ Finally, 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