
In the Matter of the Compensation of
SHANE R. OOTEN, Claimant
Own Motion No. 05-0294M
INTERIM OWN MOTION ORDER POSTPONING ACTION ON REVIEW OF
CARRIER CLOSURE
Scott M McNutt Jr, Claimant Attorneys
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Kasubhai and Langer.

Claimant requests review of the July 11, 2005 Notice of Closure that did not award permanent disability for his “post-aggravation rights” new/omitted medical condition (“full thickness articular cartilage defect of the right femoral notch, large fibrotic synovial plica shelf of the right knee”). Claimant requests: (1) appointment of a medical arbiter to evaluate his permanent impairment; (2) temporary disability benefits; and (3) the assessment of penalties and attorney fees.

FINDINGS OF FACT

On June 29, 1992, claimant sustained a compensable right knee injury. Claimant’s aggravation rights have expired.

On January 1, 2005, the SAIF Corporation voluntarily reopened claimant’s claim for a “post-aggravation rights” new medical condition (“full thickness articular cartilage defect of the right femoral notch, large fibrotic synovial plica shelf of the right knee”). ORS 656.278(1)(b) (2001); ORS 656.278(5) (2001); OAR 438-012-0030.

On July 11, 2005, SAIF closed the claim with a Notice of Closure that did not award permanent disability for his “post-aggravation rights” new/omitted medical condition (“full thickness articular cartilage defect of the right femoral notch, large fibrotic synovial plica shelf of the right knee”).

Claimant has requested review of the July 2005 Notice of Closure. Claimant seeks additional permanent disability for a “post-aggravation rights” new medical condition, an increased temporary disability award, the assessment of penalties and attorney fees, and the appointment of a medical arbiter.

CONCLUSIONS OF LAW AND OPINION

Claimant requests review of the July 11, 2005 Notice of Closure. He asserts entitlement to additional permanent disability for his “post-aggravation rights” new medical condition and seeks the appointment of a medical arbiter. *See John S. Ross*, 56 Van Natta 3369 (2004); *Edward A. Miranda*, 55 Van Natta 784 (2003). In addition, he requests that SAIF be ordered to pay temporary disability benefits and that we assess penalties and attorney fees against SAIF for allegedly unreasonable claim processing.¹

Consistent with the procedures set forth in *Miranda*, we postpone our review of the Own Motion claim closure pending receipt of a medical arbiter’s report. We also refer the claim to the Director to appoint a medical arbiter. The parties shall provide the Director with whatever information the Director deems necessary to assist the medical arbiter, including identification of the accepted “post-aggravation rights” new medical condition (full thickness articular cartilage defect of the right femoral notch, large fibrotic synovial plica shelf of the right knee), the only condition for which claimant is presently entitled to a rating of permanent disability benefits under ORS 656.278(1)(b) (2001) and ORS 656.278(2)(d) (2001).²

Following completion of the medical arbiter process, the parties shall provide written notification to the Board, along with copies of the medical arbiter report. Thereafter, a supplemental briefing schedule will be implemented to allow the parties an opportunity to address the effect, if any, these documents have on claimant’s request for review of the closure notice. After completion of that schedule, we will proceed with our review.

IT IS SO ORDERED.

Entered at Salem, Oregon on September 9, 2005

¹ Our review of the temporary disability and penalty/attorney fees issues shall be deferred pending the receipt of the medical arbiter’s report and the implementation of a supplemental briefing schedule.

² The Appellate Review Unit (ARU) is requested to provide the Board with a copy of the entire written record (including any cover letter or questions to the arbiter from ARU) that it forwards to the medical arbiter.