

In the Matter of the Compensation of
SEAN SULLIVAN, Claimant
Own Motion No. 04-0199M; 04-0341M
OWN MOTION ORDER OF DISMISSAL
James Dodge, Claimant Attorneys
SAIF Corporation, Insurance Carrier

Reviewing Panel: Members Biehl and Langer.

The SAIF Corporation submitted a “Carrier’s Own Motion Recommendation,” indicating that claimant sought reopening of his 1998 cervical back injury claim for a “worsening” of his previously accepted conditions. ORS 656.278(1)(a). (WCB Case No. 04-0199M). SAIF also submitted a “Carrier’s Own Motion Recommendation,” indicating that claimant sought reopening of his 1998 cervical back injury claim for “post-aggravation rights” new medical conditions (“cervical disc disease C3-4, C4-5, C5-6, C6-7”). ORS 656.278(1)(b). (WCB Case No. 04-0341M). Claimant’s aggravation rights have expired. In both claims, SAIF recommended against claim reopening.

SAIF issued denials regarding the aforementioned “post-aggravation rights” new medical conditions and the “worsened condition” claim. Claimant requested a hearing regarding those denials. (WCB Case Nos. 04-04741; 04-07776). On September 24 and November 12, 2004, we deferred action on the Own Motion “claim reopening” matters to await resolution of issues pending before the Hearings Division.

On April 13, 2006, Administrative Law Judge (ALJ) Davis approved a “Disputed Claim Settlement Agreement” (DCS) that resolved the parties’ dispute pending before the Hearings Division and dismissed claimant’s hearing requests. (WCB Case Nos. 04-04741; 04-07776). Pursuant to that settlement, the parties agreed that the denials of the “post-aggravation rights” new/omitted medical conditions (“cervical disc disease C3-4, C4-5, C5-6, C6-7”) and the “worsened condition” claim would be upheld. Thereafter, the ALJ dismissed the hearing request. Based on the following reasoning, we dismiss claimant’s requests for Own Motion relief regarding the aforementioned “post-aggravation rights” new medical conditions and “worsened condition” claim.

“Post-Aggravation Rights” New Medical Condition Claim

In *James W. Jordan*, 58 Van Natta 34 (2006), we explained that, under amended ORS 656.267(3), Own Motion claim processing is triggered when a “post-aggravation rights” new/omitted medical condition claim is “determined to be compensable.”¹ See WCB Admin Order 3-2005, eff. 01/01/2006, page 3; OAR 438-012-0001(4); OAR 438-012-0030(1). Accordingly, if a “post-aggravation rights” new/omitted medical condition is never “determined to be compensable” under the amended statute and rules, the carrier’s responsibility for the processing of the “post-aggravation rights” new/omitted medical condition does not materialize.

Here, claimant requested acceptance of a “post-aggravation rights” new/omitted medical condition (“cervical disc disease C3-4, C4-5, C5-6, C6-7”). By settlement, the parties have agreed that the denial of the aforementioned “post-aggravation rights” new/omitted medical conditions is upheld. Moreover, the hearing request regarding that denial has been dismissed. Thus, the denied condition has not been determined to be compensable. *Michael J. Leroux*, 57 Van Natta 3231 (2005).

In accordance with the *Jordan* holding, because the aforementioned “post-aggravation rights” new/omitted medical condition has not been determined to be compensable, there is no request for Own Motion relief to be processed. Consequently, claimant’s request for Own Motion relief regarding the “post-aggravation rights” new medical condition has become moot.

“Worsened Condition” Claim

In *Jimmie L. Taylor*, 58 Van Natta 75, 77 (2006), we noted that, effective January 1, 2006, if a disputed “current condition” or medical services claim related to a “worsened condition” is never “determined to be compensable” under the amended rules, the carrier’s responsibility for the processing of the “worsened condition” claim does not materialize. See WCB Admin. Order No. 3-2005, eff. January 1, 2006; OAR 438-012-0001(2)(a), (3).

¹ Although claim processing regarding claimant’s “post-aggravation rights” new medical condition and “worsened condition” began under the previous statutes and rules, the Own Motion “claim reopening” matters had not become final prior to January 1, 2006, and the claim existed on or after that date. Therefore, the amendments to ORS 656.267 apply to claimant’s “claim reopening” requests. HB 2294 § 4; *Jordan*, 58 Van Natta at 36; *Taylor*, 58 Van Natta at 76.

Here, claimant's worsened condition claim was based on his medical services claim for his current cervical back condition. Because of the parties' settlement and the ALJ's dismissal order, the basis of claimant's worsened condition claim; *i.e.*, his current condition and medical services claim, has not been determined to be compensable.

Consistent with the holding in *Taylor*, because claimant's "worsened condition" has not been determined to be compensable, there is no request for Own Motion relief to be processed. Consequently, SAIF's Own Motion recommendation regarding this "worsened condition" claim has become moot.

Accordingly, these Own Motion matters are dismissed.

IT IS SO ORDERED.

Entered at Salem, Oregon on April 20, 2006