

In the Matter of the Compensation of  
**ROBERT B. REESE, Claimant**  
Own Motion No. 03-0486M  
OWN MOTION ORDER  
Bruce W Brewer, Claimant Attorneys  
Andersen & Nyburg, Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

The insurer has submitted claimant's request for claim reopening for a "post-aggravation rights" new medical condition ("right knee osteoarthritis"). ORS 656.278(1)(b). Claimant's aggravation rights have expired. The insurer opposes reopening, contending that no acceptance is required because the new medical condition was previously accepted and processed. Based on the following reasoning, we authorize reopening the claim for a "post-aggravation rights" new medical condition ("right knee osteoarthritis").

In a separate Order on Review issued today's date, we set aside the insurer's "clarification" notice and remanded the claim to the insurer to accept the "post-aggravation rights" new medical condition ("right knee osteoarthritis").

There are two requirements that must be satisfied for the reopening of an Own Motion claim for a "post-aggravation rights" new or omitted medical condition. First, the new or omitted medical condition claim must have been initiated under ORS 656.267(1) after the expiration of the claimant's aggravation rights under ORS 656.273. Second, the new or omitted medical condition must be determined to be compensable as defined under OAR 438-012-0001(4) (WCB Admin. Order 3-2005, eff. January 1, 2006). ORS 656.267(3); ORS 56.278(1)(b); OAR 438-012-0001(4); *James W. Jordan*, 58 Van Natta 34 (2006).

Here, claimant's October 1992 injury claim was first closed on July 28, 1993. As such, his aggravation rights expired on July 28, 1998. Thus, there is no dispute that claimant's 2000 and 2003 claims for the new medical condition ("right knee osteoarthritis") were initiated after the expiration of his aggravation rights. In addition, in a separate litigation order issued today, we set aside the insurer's "clarification" notice and directed the insurer to accept the "post-aggravation rights" new medical condition ("right knee osteoarthritis"). OAR 438-012-0001(4). Therefore, the "post-aggravation rights" new medical condition claim has been "determined to be compensable." Consequently, we have jurisdiction to address the "claim reopening" issues. ORS 656.267(3); *James W. Jordan*, 58 Van Natta at 37.

As addressed above, this claim satisfies the requirements for claim reopening for a “post-aggravation rights” new or omitted medical condition. ORS 656.278(1)(b); OAR 438-012-0001(4). Accordingly, we authorize the reopening of claimant’s Own Motion claim for the “post-aggravation rights” new medical condition (“right knee osteoarthritis”) under ORS 656.278(1)(b) for the insurer to provide benefits in accordance with law.

When claimant’s condition is medically stationary and there is sufficient information to determine permanent disability, the insurer shall close the claim pursuant to OAR 438-012-0055, including the payment of permanent disability compensation, if any, determined to be due under ORS 656.278(1)(b) and (2)(d) for the new medical condition.

**IT IS SO ORDERED.**

Entered at Salem, Oregon on August 22, 2006