
In the Matter of the Compensation of
MICKEL M. CRAWFORD, Claimant
Own Motion No. 06-0129M
OWN MOTION ORDER REVIEWING CARRIER CLOSURE
Bailey & Yarmo LLP, Claimant Attorneys
Andersen & Nyburg, Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

Claimant requests review of the September 25, 2006 Own Motion Notice of Closure that: (1) found claimant's condition medically stationary on August 10, 2006; and (2) did not award permanent disability for a "worsened condition." On review, claimant contends that his claim was prematurely closed or, alternatively, seeks additional permanent disability benefits, as well as the appointment of a medical arbiter. Based on the following reasoning, the Notice of Closure is affirmed.¹

FINDINGS OF FACTS

On December 29, 1987, claimant sustained a compensable low back injury. The claim was first closed on October 12, 1989. Claimant's aggravation rights expired on October 12, 1994. (Ex. 16).

In March 2004, claimant requested acceptance of a "post-aggravation rights" new/omitted medical condition ("post-surgical stenosis at the L3-L4 level"). (Ex. 112). In an October 2004 stipulation, the insurer agreed to accept the aforementioned "post-aggravation rights" new/omitted medical condition. (Ex. 118). On November 17, 2004, we authorized the reopening of claimant's "post-aggravation rights" new/omitted medical condition claim. ORS 656.278(1)(b). (Ex. 120). The insurer issued a January 25, 2005 Notice of Closure that did not award any permanent disability. (Ex. 123). This closure was not appealed.

¹ Claimant's December 29, 1987 claim was accepted as a disabling claim and was first closed on October 12, 1989. Thus, claimant's aggravation rights expired on October 12, 1994. Therefore, when claimant sought claim reopening in July 2005, the claim was within our Own Motion jurisdiction. ORS 656.278(1). Consistent with our statutory authority, on July 21, 2005, we issued our Own Motion Order authorizing the reopening of the claim and noted that when claimant was medically stationary, the insurer should close the claim pursuant to OAR 438-012-0055. (WCB Case No. 05-0249M). On September 25, 2006, the insurer issued its Notice of Closure.

Claimant's low back condition worsened requiring surgery in July 2005. On July 21, 2005, we authorized the reopening of claimant's "worsened" condition claim under ORS 656.278(1)(a). (Ex. 134).

On August 10, 2006, claimant underwent an insurer-arranged medical examination (IME) with Drs. Leadbetter and Eckman, who opined that claimant's accepted conditions were medically stationary. (Ex. 161). On September 12, 2006, Dr. Moore, claimant's attending physician, concurred with the IME's findings and conclusions. (Ex. 164).

On September 25, 2006, the insurer issued a Notice of Closure, declaring claimant's condition medically stationary as of August 10, 2006. The closure notice awarded no permanent disability.

Claimant seeks review of the September 2006 Notice of Closure, disputing his medically stationary status and seeking a permanent disability award, as well as the appointment of a medical arbiter.

CONCLUSIONS OF LAW AND OPINION

Premature Closure/Medically Stationary Date

Under ORS 656.278(6) and OAR 438-012-0055, the propriety of closure turns on whether claimant was medically stationary at the time of the September 25, 2006 Notice of Closure, considering his condition at that point and not subsequent developments. *Sullivan v. Argonaut Ins. Co.*, 73 Or App 694 (1985); *Dale M. Ackler*, 55 Van Natta 3783, 3785 (2003); *Donald B. Huege*, 55 Van Natta 1952 (2003).

"Medically stationary" means that no further material improvement would reasonably be expected from medical treatment, or the passage of time. ORS 656.005(17). The issue of a claimant's medically stationary status is primarily a medical question to be decided based on competent medical evidence. *Harmon v. SAIF*, 54 Or App 121, 125 (1981); *Thomas L. Bishop*, 55 Van Natta 147, 149 (2003).

On August 10, 2006, Drs. Leadbetter and Eckman concluded that claimant's compensable conditions were medically stationary as of that date. Dr. Moore concurred with their conclusions. These opinions are unrebutted.

Based on the uncontroverted medical evidence, we find that claimant's accepted conditions under his worsening claim were medically stationary on the date his claim was closed. Therefore, his claim was not prematurely closed.

Furthermore, the medical evidence unequivocally establishes that claimant's conditions were medically stationary on August 10, 2006. Consequently, we affirm the Notice of Closure's "medically stationary" finding.

Permanent Disability

When a claim has been reopened pursuant to our Own Motion authority for a "worsened condition" under ORS 656.278(1)(a), the subsequent closure of that claim pertains only to the reopened "worsened condition" claim.

Dennis D. Kessel, 55 Van Natta 3651 (2003); *Clayton L. Sutherland*, 55 Van Natta 2694 (2003); *Ginney E. Etherton*, 55 Van Natta 2216 (2003).

Here, we authorized the reopening of the claim for worsened compensable conditions that were in Own Motion status. See ORS 656.278(1)(a). Accordingly, the insurer's September 25, 2006 Notice of Closure pertained only to the claim for a "worsened condition."² See *Ginny E. Etherton*, 55 Van Natta at 2217.

There is no indication that claimant initiated a new or omitted medical condition claim.³ In any event, the insurer neither voluntarily reopened the claim for a "post-aggravation rights" new or omitted medical condition nor submitted a Carrier's Own Motion Recommendation for or against reopening such a claim. In the absence of such events, the Notice of Closure is limited to the "worsening" claim that was reopened on September 25, 2006. *Arvin D. Lal*, 55 Van Natta 816 (2003).

² Although claimant's claim had previously been reopened for a "post-aggravation rights" new or omitted medical condition ("post-surgical stenosis at the L3-L4 level"), that claim was closed in January 2005, and the closure was not appealed. The September 2006 closure currently before us concerns the subsequently reopened "worsened condition" claim.

³ A worker may initiate a new or omitted medical condition claim at any time. ORS 656.267(1). If claimant wishes to initiate a new or omitted medical condition claim she may request formal written acceptance of the claim from the insurer. ORS 656.267(1). If the insurer receives such a claim, and the claim is "determined to be compensable," it must be processed according to the Board's rules. See 438-012-0001(4) (WCB Admin. Order No. 3-2005, eff. January 1, 2006); OAR 438-012-0030(1); *James W. Jordan*, 58 Van Natta 34, 37 (2006).

Finally, because the claim was reopened for worsened compensable conditions that were in Own Motion status, claimant is not statutorily entitled to a permanent disability award. *See Goddard v. Liberty Northwest Ins. Corp.*, 193 Or App 238 (2004); *Jimmy O. Dougan*, 54 Van Natta 1213, *on recons*, 54 Van Natta 1552 (2002), *aff'd Dougan v. SAIF*, 193 Or App 767 (2004), *vacated* 339 Or 1 (July 8, 2005).⁴ Likewise, the appointment of a medical arbiter is not available at closure of a “worsened condition” claim. *Ginney E. Etherton*, 55 Van Natta at 2218.

Accordingly, the September 25, 2006 Notice of Closure is affirmed.

IT IS SO ORDERED.

Entered at Salem, Oregon on December 1, 2006

⁴ On review, the *Dougan* Court vacated the Court of Appeals decision and dismissed the claimant’s petition for review, finding that, pursuant to ORS 656.278(4), a claimant is not entitled to judicial review of an Own Motion order that does not diminish or terminate a former award. We note that, effective January 1, 2006, the legislature amended ORS 656.278(4) to permit any party to appeal an Own Motion order. *See* House Bill 2294 (2005, sections 2, 4.