
In the Matter of the Compensation of
RONALD F. BRENNEN, Claimant
Own Motion No. 05-0173M
SECOND OWN MOTION ORDER OF DISMISSAL
Kryger et al, Claimant Attorneys
Thomas Sieg, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Lowell and Kasubhai.

Claimant, *pro se*,¹ requests reconsideration of our January 25, 2006 Own Motion Order of Dismissal that dismissed his request for claim reopening for a worsening of his previously accepted left knee conditions (“temporary exacerbation of the left knee anterior cruciate ligament tear and left medial meniscus tear”).² See ORS 656.278(1)(a). In making this determination, we found that, based on an unappealed Administrative Law Judge’s (ALJ’s) dismissal order, claimant’s current condition and medical services claim (on which his request for claim reopening under ORS 656.278(1)(a) rested) had not been determined to be compensable. Therefore, we found that there was no request for Own Motion relief to be processed because it is only after a “worsened condition” claim has been “determined to be compensable” that such a claim is processed as a request for Own Motion relief under ORS 656.278(1)(a). OAR 438-012-0001(1)(a), (3) (WCB Admin. Order 3-2005, eff. January 1, 2006); OAR 438-012-0030(1). Accordingly, we dismissed the Own Motion matter. Based on the following reasoning, on reconsideration, we continue to dismiss claimant’s request for Own Motion benefits.

On May 3, 2005, SAIF submitted claimant’s request for claim reopening for a worsening of his previously accepted left knee conditions (“temporary

¹ Although represented at hearing, claimant is apparently not represented at this time. 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:

DEPT OF CONSUMER & BUSINESS SERVICES
WORKERS' COMPENSATION OMBUDSMAN
PO BOX 14480
SALEM OR 97309-0405

² Because it is not apparent that claimant sent a copy of his request for reconsideration to the SAIF Corporation, we include a copy of that request with SAIF’s copy of this order. Claimant is reminded that copies of any document sent to the Board must also be sent to SAIF. OAR 438-012-0016.

exacerbation of the left knee anterior cruciate ligament tear and left medial meniscus tear”). See ORS 656.278(1)(a). SAIF also issued a denial of claimant’s current condition.

Claimant requested a hearing on that denial. (WCB Case No. 05-03877). As a result of claimant’s hearing request, we deferred action on the Own Motion “claim reopening” matter. Subsequently, claimant withdrew his request for hearing. On December 7, 2005, an ALJ issued an Order of Dismissal, which contained appeal rights advising claimant that if he did not request review by the Board within 30 days after the mailing date of the ALJ’s order, he would lose his right to appeal the order. Claimant did not appeal that order, which has become final by operation of law.

In his request for reconsideration, claimant states that his former attorney did not think the medical record was sufficient to prevail and declined to pursue his case on that basis. Claimant argues that he did not understand that this would result in dismissal of his “claim” and seeks time to obtain another attorney.

Because claimant did not appeal the ALJ’s order that dismissed his hearing request and that order is final, we interpret claimant’s argument as referring to his “claim” for Own Motion benefits. As we explained in our prior order, claimant’s Own Motion “worsened condition” claim was based on his medical services claim for his current left knee condition. Because of claimant’s withdrawal of his request for hearing and the resulting 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.”

As we explained in our previous order, if a disputed “current condition” or medical services claim related to a “worsened condition” is never “determined to be compensable,” the carrier’s responsibility for the processing of the “worsened condition” claim does not materialize. *Jimmie L. Taylor*, 58 Van Natta 75, 77 (2006). Here, because SAIF’s denial remains in effect, the basis of claimant’s worsened condition claim; *i.e.*, his current condition and medical services claim, has not been “determined to be compensable.” Thus, there is no request for Own Motion relief to be currently processed. Consequently, SAIF’s Own Motion recommendation has become moot and, as such, is dismissed.³

³ In the future, should claimant eventually secure a determination that a claim or condition related to the 1980 injury is compensable, SAIF would then be required to process his Own Motion claim. Until that time occurs, SAIF is under no obligation to process an Own Motion claim.

Accordingly, we withdraw our January 25, 2006 order. On reconsideration, as supplemented herein, we republish our January 25, 2006 Own Motion Order of Dismissal. The parties' rights of reconsideration and appeal shall begin to run from the date of this order.

IT IS SO ORDERED.

Entered at Salem, Oregon on February 16, 2006