
In the Matter of the Compensation of
JOSE ORTEGA, Claimant
Own Motion No. 05-0415M
OWN MOTION ORDER OF DISMISSAL
Unrepresented Claimant
Empire Pacific Risk Mgmt Inc, Defense Attorneys

Reviewing Panel: Members Kasubhai and Lowell.

The self-insured employer submitted claimant's request for claim reopening for a worsening of his previously accepted right ankle condition ("acute right ankle strain"). See ORS 656.278(1)(a). Claimant's aggravation rights have expired. The employer recommended against reopening, contending that claimant's current condition is not causally related to the accepted condition and it is not responsible for the current condition.

On December 20, 2005, the employer issued a denial of claimant's current condition. That denial was not timely appealed and has become final.

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.¹ See WCB Admin. Order No. 3-2005, eff. 01/01/2006; OAR 438-012-0001(2)(a), (3).

Here, claimant's worsened condition claim was based on his medical services claim for the current condition. The employer issued a denial of the current condition. That denial was not timely appealed and is final. As a result, the basis of claimant's worsened condition claim, *i.e.*, his current condition and medical services claim, have not been determined to be compensable.

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

¹ Although claim processing regarding claimant's "worsened condition" began under the previous statutes and rules, the Own Motion "claim reopening" matter 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" request. HB 2294 § 4; *Taylor*, 58 Van Natta at 76.

Accordingly, this Own Motion matter is dismissed.²

IT IS SO ORDERED.

Entered at Salem, Oregon on February 24, 2006

² Finally, 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:

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