

In the Matter of the Compensation of
JOHN D. MAGERAS, Claimant
Own Motion No. 06-0001M
OWN MOTION ORDER
Unrepresented Claimant
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Langer and Kasubhai.

The SAIF Corporation has submitted a Carrier's Own Motion Recommendation against the reopening of claimant's claim for a "worsening" of his previously accepted condition ("lumbar strain"). *See* ORS 656.278(1)(a). Claimant's aggravation rights have expired. SAIF opposed reopening, contending that: (1) claimant's compensable condition did not worsen requiring medical treatment that qualifies for claim reopening and resulting in an inability to work; and (2) the proposed medical treatment is not reasonable and necessary.

Pursuant to ORS 656.278(1)(a), among other requirements for the reopening of an Own Motion claim for a worsening of a compensable injury, the worsening must require hospitalization, surgery (either inpatient or outpatient), or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the worker to return to work. In *Larry D. Little*, 54 Van Natta 2536 (2002), we concluded that if any one of the three qualifying medical treatments listed in ORS 656.278(1)(a) is satisfied, a "worsening condition" claim meets the medical treatment requirement for reopening in Own Motion.

These three qualifying medical treatments are as follows: (1) "Surgery" is defined as an invasive procedure undertaken for a curative purpose that is likely to temporarily disable the worker; and (2) "hospitalization" is defined as a nondiagnostic procedure that requires an overnight stay in a hospital or similar facility. The third type of qualifying treatment requires establishment of three elements: (a) curative treatment (treatment that relates to or is used in the cure of diseases, tends to heal, restore to health, or to bring about recovery); (b) prescribed in lieu of (in the place of or instead of) hospitalization; and (c) that is necessary (required or essential) to enable the injured worker to return to work. *Id.* at 54 Van Natta 2542, 2546.

The issue of whether a worsening of the compensable injury requires hospitalization, inpatient or outpatient surgery, or "other curative treatment prescribed in lieu of hospitalization that is necessary to enable the injured

worker to return to work” presents a medical question that must be addressed by persuasive medical evidence in the record. *Little*, 54 Van Natta at 2542-43. In other words, we cannot infer that a treatment involves one of the above medical treatment requirements under ORS 656.278(1)(a). *SAIF v. Calder*, 157 Or App 224, 227-28 (1998); *Little*, 54 Van Natta at 2543.

Here, the Managed Care Organization (MCO) disapproved the surgery (“circumferential fusion with decompression, L4-5, L5-S1”) recommended by Dr. Kitchel, claimant’s attending surgeon. There is no indication that the MCO’s decision has been appealed.

Thus, the record does not establish that the proposed surgery is appropriate medical treatment for claimant’s compensable condition.

In *Dustin L. Crompton*, 50 Van Natta 1206 (1998), we found that the issue of the appropriateness of the proposed surgery was essential to the issue of the claimant’s entitlement to claim reopening under ORS 656.278. Similarly, in *Lori I. Ake*, 57 Van Natta 3129 (2005), we declined to reopen a “worsened condition” claim, when the Workers’ Compensation Division’s Medical Review Unit (MRU), had dismissed a claimant’s appeal of an MCO disapproval of a surgery request.

Here, as previously noted, the MCO’s decision has not been appealed to the Director. As such, there is no recommendation of surgery (or hospitalization) addressing claimant’s “worsened condition” claim. Nor does the record support the existence of “other curative treatment prescribed in lieu of hospitalization” that was necessary to enable claimant to return to work. ORS 656.278(1)(a); *Ake*, 57 Van Natta at 3130; *Little*, 54 Van Natta at 2546.

Under these circumstances, we conclude that this Own Motion claim for a worsening of claimant’s previously accepted low back condition does not satisfy the criteria set forth in ORS 656.278(1)(a) to qualify this worsening claim for reopening.^{1 2}

¹ If a party obtains medical evidence that addresses the reasonableness and necessity of the proposed medical treatment that is lacking from the current record, that party may request reconsideration of our decision. ORS 656.278(1)(a). However, because our authority to reconsider this decision expires within 30 days after the mailing date of the Own Motion Order, the reconsideration request must be filed within that 30-day period. OAR 438-012-0065(2).

Consequently, we deny the reopening of the Own Motion claim.³

IT IS SO ORDERED.

Entered at Salem, Oregon on February 14, 2006

² The record does not demonstrate that claimant has initiated a “post-aggravation rights” new medical condition claim. Thus, any consideration of “unclaimed” conditions would be premature. *See* ORS 656.267(3); ORS 656.278(1)(b). Instead, our decision is limited to a review of claimant’s worsening claim for his previously accepted lumbar sprain condition. Furthermore, our decision is premised on a finding that no hospitalization, surgery or other curative treatment prescribed in lieu of hospitalization that is necessary to enable claimant to return to work as required under ORS 656.278(1)(a) has been rendered or recommended for claimant’s accepted lumbar sprain condition. Under such circumstances, we are unable to authorize the reopening of claimant’s 1995 low back condition claim under ORS 656.278(1)(a).

If claimant wishes to initiate a new or omitted medical condition claim he may request formal written acceptance of the claim from SAIF. ORS 656.267(1). If SAIF 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).

³ 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