
In the Matter of the Compensation of
RICHARD D. FOUNTAINE, Claimant
Own Motion No. 05-0393M
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 April 18, 1999 injury claim for a "worsening" of his previously accepted conditions ("left wrist sprain/strain, right wrist scapholunate ligament tear, cervical strain and lip laceration"). See ORS 656.278(1)(a) (2001). Claimant's aggravation rights have expired. SAIF opposed reopening, contending that claimant's compensable conditions do not require any medical treatment that qualifies for claim reopening. Based on the following reasoning, we find that the claim does not qualify for reopening.

Pursuant to ORS 656.278(1)(a) (2001), there are three requirements for the reopening of an Own Motion claim for a worsening of a compensable injury. First, the worsening must result in the partial or total inability of the worker to work. Second, 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. Third, the worker must be in the work force at the time of disability as defined under the criteria in *Dawkins v. Pacific Motor Trucking*, 308 Or 254 (1989).¹ *James J. Kemp*, 54 Van Natta 491 (2002).

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) (2001) is satisfied, a "worsening condition" claim meets the medical treatment requirement for reopening in Own Motion. We defined these three qualifying medical treatments 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

¹ In *Dawkins*, the Court concluded that a claimant is in the work force at the time of disability if he or she is: (1) engaged in regular gainful employment; or (2) not employed, but willing to work and seeking work; or (3) not employed, but willing to work and is not seeking work because a work-related injury has made such efforts futile. *Dawkins v. Pacific Motor Trucking*, 308 Or at 258.

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.

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 medical evidence. In other words, we cannot infer that a treatment involves 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.” *SAIF v. Calder*, 157 Or App 224, 227-28 (1998) (“the Board is not an agency with specialized medical expertise entitled to take official notice of technical facts within its specialized knowledge”); *Terry L. Smith*, 55 Van Natta 2763 (2003). This question must be answered by persuasive medical evidence.

Here, on October 6, 2005, claimant sought treatment for intermittent wrist pain. Diagnosing right wrist scapholunate ligament tear, status post arthroscopy with debridement and possible STT versus 2nd CMC joint mild degenerative joint disease, Mr. Huntley, PA, under the supervision of Dr. Vela, noted that claimant understood that he may have to live with intermittent pain and “if necessary, [was] willing to accept that and live with it.” Mr. Huntley further noted that there were no interventions warranted and no change in work status. (Ex. 3).

Based on our review, the record does not establish that claimant’s conditions required hospitalization, surgery or other curative treatment that was prescribed in lieu of (instead of or in place of) hospitalization that was necessary to enable him to return to work. ORS 656.278(1)(a) (2001); *Larry D. Little*, 54 Van Natta at 2546. In other words, no physician recommended surgery or hospitalization. Nor is there any evidence that there was any medical treatment prescribed that constituted “other curative treatment prescribed in lieu of hospitalization that is necessary to enable the injured worker to return to work.” *See Stephen Jackson*, 55 Van Natta 2421, 2422 (2003); *Mark R. Gescher*, 55 Van Natta 1956 (2003) (ORS 656.278(1)(a) (2001) not satisfied where, although treatment (prescription medication) was arguably curative and necessary to enable the claimant to return to

work, there was no evidence that the treatment was prescribed in lieu of hospitalization).² Consequently, we are unable to authorize a reopening of the Own Motion claim.

Accordingly, the request for claim reopening is denied. Claimant's entitlement to medical expenses pursuant to ORS 656.245 regarding his accepted conditions is not affected by this order.³

IT IS SO ORDERED.

Entered at Salem, Oregon on January 13, 2006

² If a party obtains medical evidence that addresses the statutorily required medical treatment (*i.e.*, hospitalization, surgery or curative treatment prescribed in lieu of hospitalization that is necessary to enable the injured worker to return to work) that is lacking from the current record, that party may request reconsideration of our decision. However, because our authority to reconsider this decision expires within 30 days after the mailing of the Own Motion Order, the reconsideration request must be filed within that 30-day period. OAR 438-012-0065(2).

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