In the Matter of the Compensation of
MICHAEL R. HARTMAN, Claimant
Own Motion No. 05-0394M
OWN MOTION ORDER
Unrepresented Claimant
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Kasubhai and Langer.

The SAIF Corporation has submitted a Carrier's Own Motion Recommendation against the reopening of claimant's February 28, 1995 claim for a "worsening" of his previously accepted conditions ("scapholunate dissociation, right wrist"). *See* ORS 656.278(1)(a). 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), 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) 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 overnight stay in a hospital or similar facility. The third type of qualifying treatment requires establishment of three elements: (a) curative treatment

[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.

(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 September 26, 2005, claimant sought treatment with Dr. Coe for pain, numbness and tingling in his hand. Diagnosing posttraumatic degenerative arthrosis of the right wrist with possible carpal tunnel syndrome, Dr. Coe noted that the arthrosis was not of "the degree that [he] would recommend a midcarpal arthrodesis scaphoid excision." He recommended electrodiagnostic studies before planning for surgery. If surgery was warranted, Dr. Coe indicated that it would be directed to claimant's arthritic condition. Also, depending on the results from the electrodiagnostic studies, Dr. Coe opined that claimant might need a carpal tunnel release. Dr. Coe released claimant to regular work without restrictions. (Ex. 4).

Despite mentioning the possibility of a future surgery, Dr. Coe did not ultimately recommend surgery. Although a *recommendation* for the requisite medical treatment is sufficient to qualify for claim reopening under ORS 656.278(1)(a) (2001), the *possibility* of such treatment is not. *Theron W. Stiehl*, 56 Van Natta 2267(2004) ("possibility" of surgery insufficient to satisfy the medical treatment requirement for claim reopening under ORS 656.278(1)(a)); *Jeffrey D. Dugan*, 56 Van Natta 550 (2004) (same); *compare Corey A. Otterson*, 56 Van Natta 363 (2004) (physician's recommendation that the claimant undergo surgery for compensable condition was sufficient to qualify for claim reopening under ORS 656.278(1)(a), even though the surgery had not been performed or scheduled).

In conclusion, no physician has currently recommended surgery or hospitalization. Furthermore, there has been no recommendation for medical

treatment that qualifies as "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) (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); *Mark R. Gescher*, 55 Van Natta 1956 (2003) (same).

Under these circumstances, this Own Motion claim for a worsening of claimant's previously accepted condition (scapholunate dissociation, right wrist) does not satisfy the criteria set forth in ORS 656.278(1)(a) to qualify this worsening claim for reopening.[2] [3]

Consequently, we deny the reopening of the Own Motion claim.[4]

IT IS SO ORDERED.

Entered at Salem, Oregon on January 18, 2006

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[2] If a party obtains medical evidence that addresses the requisite medical treatment component of the statutory standard that is lacking from the current record, that party may request reconsideration of our decision. ORS 656.278(1)(a) (2001). 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).

[3] 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 scapholunate dissociation and right wrist 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 scapholunate dissociation and right wrist condition. Under such circumstances, we are unable to authorize the reopening of claimant's 1995 right wrist 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. 01/01/2006); OAR 438-012-0030(1) (WCB Admin Order No. 3-2005); *James W. Jordan*, 58 Van Natta 34, 37 (2006).

[4] 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