

In the Matter of the Compensation of
ROSA M. TOLEDO, Claimant
Own Motion No. 05-0421M
OWN MOTION ORDER
Glen J Lasken, Claimant Attorneys
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Kasubhai and Lowell.

The SAIF Corporation has submitted a Carrier's Own Motion Recommendation against the reopening of claimant's January 22, 1994 injury claim for a "worsening" of her previously accepted condition ("lumbar strain"). See ORS 656.278(1)(a). Claimant's aggravation rights have expired. SAIF opposed reopening, contending that claimant's compensable condition does 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), one of the requirements for the reopening of an Own Motion claim for a worsening of a compensable injury is that 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 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 (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 a 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; *Kemp*, 54 Van Natta at 509.

Here, in October 2005, claimant sought treatment from Dr. Belza, her attending physician, for low back pain. Diagnosing “low back pain with a right lumbar radiculitis of questionable etiology,” Dr. Belza recommended a lumbar MRI, as well as a physical capacity evaluation (PCE) to determine her work status. Claimant was released to modified work duty. (Ex. 4-1). In November 2005, claimant returned to Dr. Belza, with continuing low back complaints radiating into her right lower extremity. Dr. Belza recommended a repeat MRI, an epidural steroid injection, and continued modified work duty.

The record does not establish that claimant’s condition 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 her to return to work. ORS 656.278(1)(a); *Larry D. Little*, 54 Van Natta at 2546. In other words, no physician recommended surgery or hospitalization. Nor is there any evidence that the prescribed epidural steroid injection 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) 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). Consequently, we are unable to authorize a reopening of the Own Motion claim.¹

Accordingly, the request for claim reopening is denied. Claimant’s entitlement to medical expenses pursuant to ORS 656.245 regarding her accepted low back condition is not affected by this order.

IT IS SO ORDERED.

Entered at Salem, Oregon on January 27, 2006

¹ 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) component 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).