
In the Matter of the Compensation of
JACQUELYN C. SAGE, Claimant
Own Motion No. 05-0291M
OWN MOTION ORDER OF DISMISSAL
Edward J Hill, Claimant Attorneys
Reinisch Mackenzie Healey et al, Defense Attorneys

Reviewing Panel: Members Kasubhai and Lowell.

The self-insured employer submitted claimant's request for claim reopening for a worsening of her previously accepted low back condition ("lumbosacral and sacroiliac strain, L4-5 herniated disc"). See ORS 656.278(1)(a). Claimant's aggravation rights have expired. The employer submitted a "Carrier's Own Motion Recommendation" against reopening, contending that claimant's current condition is not causally related to the accepted conditions and it is not responsible for the current condition. On June 10, 2005, the employer issued a denial of claimant's current condition.

Claimant requested a hearing regarding the June 10, 2005 denial of claimant's medical services claim for her current condition (the claim on which her "worsening" claim was based). (WCB Case No. 05-05141). As a result of claimant's hearing request, we deferred action on the Own Motion "claim reopening" matters. Subsequently, claimant withdrew her request for hearing. On June 23, 2006, an Administrative Law Judge (ALJ) issued an Order of Dismissal. That order has not been appealed and has become final.

Based on the following reasoning, we dismiss claimant's request for Own Motion relief regarding the "worsened condition" claim.

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 OAR 438-012-0001(2)(a), (3).

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.

Here, claimant's worsened condition claim was based on her medical services claim for her current low back condition. Because of claimant's withdrawal of her request for hearing and the ALJ's dismissal order, the basis of claimant's worsened condition claim; *i.e.*, her current condition and medical services claim, has 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.

Accordingly, this Own Motion matter is dismissed.

IT IS SO ORDERED.

Entered at Salem, Oregon on July 28, 2006