

In the Matter of the Compensation of
GERALD D. DUREN, Claimant
Own Motion No. 06-0061M
OWN MOTION ORDER
Unrepresented Claimant
State Farm Insurance Co, Insurance Carrier

Reviewing Panel: Members Kasubhai and Lowell.

The insurer has submitted a Carrier's Own Motion Recommendation against the reopening of claimant's 1981 injury claim for a "worsening" of his previously accepted lumbar conditions. *See* ORS 656.278(1)(a). Claimant's aggravation rights have expired. The insurer opposed reopening, contending, among other issues, 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.

Among the requirements for claim reopening under ORS 656.278(1)(a), there must be a worsening that requires 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. Satisfaction of any one of these three requisite medical treatments meets the medical treatment under ORS 656.278(1)(a). *Larry D. Little*, 54 Van Natta 2536 (2002). "Surgery" is defined as an invasive procedure undertaken for a curative purpose that is likely to temporarily disable the worker. *Id.* at 54 Van Natta 2542. "Hospitalization" is defined as a nondiagnostic procedure that requires an overnight stay in a hospital or similar facility. "Other curative treatment prescribed in lieu of hospitalization that is necessary to enable the injured worker to return to work" 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. *Little*, 54 Van Natta at 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 answered 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).

Here, on April 25, 2006, Dr. Maxwell, claimant’s attending physician, reported that the prescribed steroid blocks were palliative in nature. He noted that surgical intervention would be the only curative procedure for claimant’s conditions. Reasoning that the steroid blocks were provided to alleviate claimant’s symptoms (which are a direct result of his spinal stenosis, lumbar spondylosis and radiculopathy), Dr. Maxwell concluded that the blocks would not “cure” any of those diagnoses. (Ex. 4).

Based on our review, we find that no physician recommended surgery or hospitalization. Nor is there any evidence that the steroid injections 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).^{1 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 June 14, 2006

¹ Additionally, the insurer contended that claimant was not in the work force at the time of the current worsening. ORS 656.278(1)(a). In this particular case, this matter need not be addressed because even if the “work force” issue was found in claimant’s favor, the record would still be insufficient to support a claim reopening under ORS 656.278(1)(a) for the reasons expressed above.

² If a party obtains evidence that addresses the “medical treatment” and “work force” components of the statutory standard that are 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