

In the Matter of the Compensation of
DARRYL G. ALTMAN, Claimant
Own Motion No. 06-0065M
OWN MOTION ORDER
Philip H Garrow, Claimant Attorneys
SAIF Corporation, Insurance Carrier

Reviewing Panel: Members Biehl and Langer.

The SAIF Corporation has submitted a Carrier's Own Motion Recommendation against the reopening of claimant's 1987 claim for a "worsening" of his previously accepted conditions ("left wrist"). *See* ORS 656.278(1)(a). Claimant's aggravation rights have expired. SAIF opposed reopening, contending, among other issues, 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.

FINDINGS OF FACT

Claimant was compensably injured on May 8, 1987. SAIF accepted a disabling "left wrist" condition. (Ex. 6). Claimant's aggravation rights have expired.

In February 2006, claimant sought treatment with Dr. Hinz for left foot and ankle swelling and pain. Diagnosing subtalar joint arthritis, Dr. Hinz recommended an MRI to obtain the proper diagnosis. (Ex. 15).

In March 2006, Dr. Hinz reported that claimant's medical record did not contain significant reference to foot and lower extremity injury related to the 1987 injury claim. Dr. Hinz also never provided any care for claimant's left wrist and could not "confirm or dispel any suspicion that there may be worsening of his accepted left wrist carpal navicular injury." (Ex. 19).

CONCLUSIONS OF LAW AND OPINION

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. *Harold B. Hamilton*, 58 Van Natta 1338 (2006). Satisfaction of any one of these three requisite medical treatments meets the "medical treatment" requirement under ORS 656.278(1)(a). *Larry D. Little*, 54 Van Natta 2536, 2542 (2002).

“Surgery” is defined as an invasive procedure undertaken for a curative purpose that is likely to temporarily disable the worker. *Little*, 54 Van Natta at 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 satisfaction of three elements: (1) 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); (2) prescribed (directed or ordered by a doctor) in lieu of (in the place of or instead of) hospitalization; and (3) that is necessary (required or essential) to enable (render able or make possible) the injured worker to return to work. *Little*, 54 Van Natta at 2546.

Thus, there must be a “worsening of the compensable injury” that requires specific medical treatment, as summarized above. Here, the “compensable injury” is a “left wrist” condition. Although claimant’s left foot or ankle condition may eventually require one of the requisite medical treatments, the record does not establish that claimant’s current need for medical treatment was due to a worsening of his accepted “left wrist” condition. Instead, according to Dr. Hinz’ opinion, the medical treatment concerned “subtalar joint arthritis.” Because claimant’s left foot/ankle condition has not been accepted, it cannot form the basis for a “worsened” condition claim under ORS 656.278(1)(a).

Under these circumstances, this Own Motion claim for a worsening of claimant’s previously accepted condition (left wrist) does not satisfy the criteria set forth in ORS 656.278(1)(a) to qualify this worsening claim for reopening.^{1 2}

¹ Additionally, SAIF contended that there was no “worsening” of the compensable conditions that resulted in an inability to work and claimant was not in the work force at the time of the current worsening. ORS 656.278(1)(a). In this particular case, these issues need not be addressed because even if the “inability to work” and “work force” issues were 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 “work force,” “inability to work,” and “medical treatment” components of the statutory standard that are lacking from the current record, that party may request reconsideration of our decision. ORS 656.278(1)(a). 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).

Consequently, we deny the reopening of the Own Motion claim.³

IT IS SO ORDERED.

Entered at Salem, Oregon on June 19, 2006

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 *left 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 left wrist condition*. Under such circumstances, we are unable to authorize the reopening of claimant’s 1987 left 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. January 1, 2006); OAR 438-012-0030(1) (WCB Admin Order No. 3-2005); *James W. Jordan*, 58 Van Natta 34, 37 (2006).