

In the Matter of the Compensation of
JEANNE STRANGE, Claimant
Own Motion No. 05-0361M
OWN MOTION ORDER OF DISMISSAL
Daniel M Spencer PC, Claimant Attorneys
Liberty NW Ins Corp, Insurance Carrier

Reviewing Panel: Members Lowell and Kasubhai.

The insurer submitted claimant's request for claim reopening for a worsening of her previously accepted cervical conditions ("cervical strain and C5-6 disc herniation; post-traumatic degenerative arthritis and spondylosis at C4-5 and C6-7"). *See* ORS 656.278(1)(a). Claimant's aggravation rights have expired. The insurer 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.

In *Jimmie L. Taylor*, 58 Van Natta 75 (2006), we noted that, effective January 1, 2006, an Own Motion claim for a "worsened condition" is defined as a "written request by or on behalf of a claimant for temporary disability compensation or claim reopening regarding a worsened condition that has been determined to be compensable and that was initiated after the rights under ORS 656.273 expired." OAR 438-012-0001(2)(a), (3) (WCB Admin. Order No. 3-2005, eff. January 1, 2006). Thus, under these amended rules, 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. *Taylor*, 58 Van Natta at 77.

These rule amendments apply to all Own Motion claims existing or arising on or after January 1, 2006, but not to any matter for which an order has become final before that date. *See* WCB Admin. Order No. 3-2005, Order of Adoption, page 19.

Here, although claim processing began in 2005, the claim reopening issue was not final before January 1, 2006. Therefore, the amended rules apply to claimant's "worsened condition" claim.

OAR 438-012-0001(3) defines "determined to be compensable" for a "worsened condition" as:

“(a) The insurer does not dispute compensability of or responsibility for the claim or condition; *i.e.*, the insurer has not issued a denial within the time period prescribed under ORS 656.262 or ORS 656.308(2); or

“(b) An order from an Administrative Law Judge, the Board, or the court has found the claim or condition compensable and the responsibility of the carrier.”

As indicated by its Own Motion recommendation, the insurer disputes compensability of and responsibility for claimant’s claim or condition, although it has not issued a denial of that claim or condition.¹ Therefore, the claim or condition related to a “worsened condition” has not been “determined to be compensable” under the amended rules.

As noted above, pursuant to OAR 438-012-0001(2)(a), (3) and OAR 438-012-0030(1) (WCB Admin. Order No. 3-2005), it is only *after* a “worsened condition” claim has “been determined to be compensable” that such a claim is processed as a request for Own Motion relief under ORS 656.278(1)(a). Thus, because claimant’s “worsened condition” currently has not been determined to be compensable, there is no request for Own Motion relief to be processed. Consequently, the insurer’s Own Motion recommendation has become moot.

Accordingly, this Own Motion matter is dismissed.²

IT IS SO ORDERED.

Entered at Salem, Oregon on March 1, 2006

¹ Because the insurer contends that claimant’s current “worsened condition” is not causally related to the accepted condition and it is not responsible for the current “worsened condition” without issuing a formal denial under ORS 656.262 and ORS 656.308(2), it has, in effect, *de facto* denied the current condition. Claimant may request a hearing on that *de facto* denial. If she prevails at hearing, or at any stage on appeal, the current “worsened condition” claim would be “determined to be compensable” at that point and the insurer would be required to process that claim within 30 days by either voluntarily reopening it or submitting an Own Motion Recommendation for or against claim reopening. See OAR 438-012-0001(3)(b); OAR 438-012-0030(1).

² Finally, inasmuch as claimant is unrepresented, she may wish to consult the Workers' Compensation Ombudsman, whose job it is to assist injured workers in such matters. She 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