
In the Matter of the Compensation of
RONALD L. HEIN, Claimant
Own Motion No. 05-0406M
OWN MOTION ORDER OF DISMISSAL
Unrepresented Claimant
Liberty NW Ins Corp, Insurance Carrier

Reviewing Panel: Members Langer and Kasubhai.

The insurer submitted claimant's request for claim reopening for a worsening of his previously accepted left shoulder condition. *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 condition and it is not responsible for the current condition.

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* WCB Admin. Order No. 3-2005, eff. 01/01/2006; OAR 438-012-0001(2)(a), (3).

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."

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.

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. Therefore, the claim or condition related to a "worsened condition" has not been "determined to be compensable" under the amended rules. *See Jeanne Strange*, 58 Van Natta 651 (2006).

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 he prevails at hearing, or at any stage on appeal, the "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).

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 10, 2006

² 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