

In the Matter of the Compensation of
CHARLES E. WRIGHT, Claimant
Own Motion No. 03-0351M
OWN MOTION ORDER OF DISMISSAL
Merkel & Associates, Claimant Attorneys
Wallace Klor & Mann PC, Defense Attorneys

Reviewing Panel: Members Kasubhai and Langer.

The self-insured employer submitted a “Carrier’s Own Motion Recommendation” against claim reopening for a “worsened” condition and a “post-aggravation rights” new or omitted medical condition (“left knee anterior cruciate ligament deficiency”). ORS 656.278(1)(a), (b). Claimant’s aggravation rights have expired. The employer opposed the reopening of the claim, contending that claimant’s “worsened” condition and “post-aggravation rights” new medical condition were not causally related to the compensable condition. In addition, the employer issued a denial regarding the aforementioned “post-aggravation rights” new medical condition, on which claimant requested a hearing. (WCB Case No. 03-05841).

On October 2, 2003, we referred the Own Motion matter to the Hearings Division for a fact finding hearing to be held in tandem with pending litigation that involved appeals of denials issued under claimant’s 1995 and 2003 claims. (WCB Case Nos. 03-05841, 04-01111). On March 15, 2006, the Administrative Law Judge (ALJ) issued orders upholding the employer’s denials and recommending against the reopening of the “worsening” claim.¹ The ALJ’s order has not been appealed and has become final.

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

¹ We treat the ALJ’s recommendation regarding the “worsened condition” claim as an “Opinion and Order.” *Leslie R. Ingram, Jr.*, 58 Van Natta 973 (2006).

² Although claim processing regarding claimant’s “worsened condition” and “post-aggravation rights” new medical condition (“left knee anterior cruciate ligament deficiency”) 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; *Jordan*, 58 Van Natta at 36.

Here, claimant's worsened condition claim was based on his medical services claim for his current left knee condition. In light of the ALJ's findings and recommendation regarding the "worsening" claim, the basis of claimant's worsened condition claim; *i.e.*, his current condition and medical services claim, has not been determined to be compensable.

Consistent with the holding in *Taylor*, 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.

"Post-Agravation Rights" New/Omitted Medical Condition

In *James W. Jordan*, 58 Van Natta 34 (2006), we explained that, under amended ORS 656.267(3), Own Motion claim processing is triggered when a "post-aggravation rights" new/omitted medical condition claim is "determined to be compensable."³ See WCB Admin Order 3-2005, eff. 01/01/2006, page 3; OAR 438-012-0001(4); OAR 438-012-0030(1). Accordingly, if a "post-aggravation rights" new/omitted medical condition is never "determined to be compensable" under the amended statute and rules, the carrier's responsibility for the processing of the "post-aggravation rights" new/omitted medical condition does not materialize.

Here, claimant requested that the employer accept a "post-aggravation rights" new/omitted medical condition ("left knee anterior cruciate ligament deficiency"). The employer denied the claimed condition and that denial has become final.

In accordance with the *Jordan* holding, because the aforementioned "post-aggravation rights" new/omitted medical 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 the aforementioned "post-aggravation rights" new medical condition has become moot.

Accordingly, these Own Motion matters are dismissed.

IT IS SO ORDERED.

Entered at Salem, Oregon on May 3, 2006

³ See fn 2.