
In the Matter of the Compensation of
GEORGE SWEET, Claimant
Own Motion No. 06-0054M
INTERIM OWN MOTION ORDER POSTPONING ACTION ON REVIEW OF
CARRIER CLOSURE
James Dodge, Claimant Attorneys
Radler et al, Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

Claimant requests review of the March 31, 2006 Notice of Closure that did not award permanent disability for his “post-aggravation rights” new/omitted medical condition (“fusion extension L3-L4”). Claimant requests the appointment of a medical arbiter to evaluate his permanent impairment.

FINDINGS OF FACT

On July 30, 1971, claimant sustained a compensable low back injury. Claimant’s aggravation rights have expired.

On April 30, 2001, we authorized the reopening of claimant’s 1971 claim under ORS 656.278(1)(a) for a worsening of his previously accepted low back conditions. (Ex. 99). On February 2003, the self-insured employer voluntarily reopened claimant’s claim for a “post-aggravation rights” new medical condition (“fusion extension L3-L4”). (Ex. 133). ORS 656.278(5); ORS 656.278(1)(b).

On March 5, 2003, the employer closed the claim with an Own Motion Notice of Closure that: (1) declared claimant’s condition medically stationary as of February 10, 2003; (2) awarded temporary disability benefits from April 23, 2001 through February 10, 2003; and (3) awarded an additional 1 percent (3.2 degrees) unscheduled permanent disability for the “post-aggravation rights” new medical condition. (Ex. 135).

Claimant requested review of the March 5, 2003 closure. On August 26, 2003, we set aside the March 5, 2003 closure as premature. *See George Sweet*, 55 Van Natta 2815 (2003). (Ex. 141).

On March 31, 2006, the employer re-closed the claim with an Own Motion Notice of Closure that: (1) declared claimant’s condition medically stationary as of January 24, 2006; (2) awarded temporary disability benefits from April 23, 2001 through January 24, 2006; and (3) did not award permanent disability for the “post-aggravation rights” new medical condition. (Ex. 178).

Claimant has requested review of the October 2005 Notice of Closure. Claimant asserts entitlement to additional permanent disability for his “post-aggravation rights” new medical condition and seeks the appointment of a medical arbiter.

CONCLUSIONS OF LAW AND OPINION

Claimant requests review of the Notice of Closure based on his disagreement with the impairment findings used to rate his disability. In addition, he requests the appointment of a medical arbiter. *See John S. Ross*, 56 Van Natta 3369 (2004); *Edward A. Miranda*, 55 Van Natta 784 (2003).¹

Consistent with the procedures set forth in *Miranda*, we postpone our review of the Own Motion claim closure pending receipt of a medical arbiter’s report. We also refer the claim to the Director to appoint a medical arbiter. The parties shall provide the Director with whatever information the Director deems necessary to assist the medical arbiter, including identification of the accepted “post-aggravation rights” new medical condition (fusion extension L3-L4), the only condition for which claimant is presently entitled to a rating of permanent disability benefits under ORS 656.278(1)(b) and ORS 656.278(2)(d).²

Following completion of the medical arbiter process, the parties shall provide written notification to the Board, along with copies of the medical arbiter report. Thereafter, a supplemental briefing schedule will be implemented to allow the parties an opportunity to address the effect, if any, these documents have on claimant’s request for review of the closure notice. After completion of that schedule, we will proceed with our review.

IT IS SO ORDERED.

Entered at Salem, Oregon on May 11, 2006

¹ To the extent the employer’s March 31, 2006 closure pertains to a “worsened” condition claim under ORS 656.278(1)(a), claimant is not entitled to a referral for an arbiter examination because he is not entitled to a permanent disability award for a “worsened” condition claim. *Goddard v. Liberty Northwest Ins. Corp.*, 193 Or App 238 (2004); *Jimmy O. Dougan*, 54 Van Natta 1213, *on recon* 54 Van Natta 1552 (2002), *aff’d Dougan v. SAIF*, 193 Or App 767 (2004), *vacated* 339 Or 1 (2005); *Clarence R. Wikel*, 55 Van Natta 1329 (2003) .

² The Appellate Review Unit (ARU) is requested to provide the Board with a copy of the entire written record (including any cover letter or questions to the arbiter from ARU) that it forwards to the medical arbiter.