
In the Matter of the Compensation of
ROBERTA R. STROZYK, Claimant
Own Motion No. 07-0090M
OWN MOTION ORDER
Unrepresented Claimant
Safeway Stores Inc, Self-insured Employer

Reviewing Panel: Members Lowell and Kasubhai.

The self-insured employer has submitted its Own Motion Recommendation against the reopening of claimant's 1993 claim for a "worsening" of her previously accepted condition ("bilateral carpal tunnel syndrome"). See ORS 656.278(1)(a). Claimant's aggravation rights have expired. The employer opposes reopening, contending that claimant's compensable condition does not require any medical treatment that qualifies for claim reopening. Based on the following reasoning, we deny claim reopening.

Pursuant to ORS 656.278(1)(a), among the requirements for the reopening of an Own Motion claim for a worsening of a compensable injury is a requirement that the worsening must require 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. *Health A. Wiltfong*, 57 Van Natta 3108 (2005).

If any one of the three qualifying medical treatments listed in ORS 656.278(1)(a) is satisfied, a "worsening condition" claim meets the medical treatment requirement for reopening in Own Motion. *Larry D. Little*, 54 Van Natta 2536 (2002). The three qualifying medical treatments listed in ORS 656.278(1)(a) are defined as follows: (1) "Surgery" is an invasive procedure undertaken for a curative purpose that is likely to temporarily disable the worker; and (2) "hospitalization" is a nondiagnostic procedure that requires an overnight stay in a hospital or similar facility. *Little*, 54 Van Natta at 2542. The third type of qualifying treatment requires establishment 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) 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.

Whether a worsening of the compensable injury requires hospitalization, inpatient or outpatient surgery, or “other curative treatment prescribed in lieu of hospitalization that is necessary to enable the injured worker to return to work” presents a medical question that must be answered by persuasive medical evidence. In other words, we cannot infer that a treatment involves hospitalization, inpatient or outpatient surgery, or “other curative treatment prescribed in lieu of hospitalization that is necessary to enable the injured worker to return to work.” *SAIF v. Calder*, 157 Or App 224, 227-28 (1998) (“the Board is not an agency with specialized medical expertise entitled to take official notice of technical facts within its specialized knowledge”); *Terry L. Smith*, 55 Van Natta 2763 (2003).

Here, in March 2007, claimant sought treatment for bilateral wrist pain. Diagnosing bilateral carpal tunnel syndrome (CTS) symptoms, right greater than left, Dr. McNamara’s physician’s assistant, recommended nerve conduction studies.

In May 2007, claimant attended an insurer-arranged medical examination with Dr. Borman, who noted that March 2007 nerve conduction studies were consistent with bilateral CTS. However, Dr. Borman concluded that claimant’s physical examination did not corroborate such a finding. Rather, he opined that claimant’s accepted bilateral CTS had been medically stationary since 1993 and had not worsened. Dr. Borman did not recommend any further treatment. The record does not include any further medical evidence.

After conducting our review, the record does not establish that claimant’s accepted bilateral CTS required hospitalization, surgery or other curative treatment that was prescribed in lieu of (instead of or in place of) hospitalization that was necessary to enable him to return to work. ORS 656.278(1)(a); *Larry D. Little*, 54 Van Natta at 2546. In other words, no physician recommended surgery or hospitalization. Nor is there any evidence that there was any medical treatment prescribed that constituted “other curative treatment prescribed in lieu of hospitalization that is necessary to enable the injured worker to return to work.” *See Stephen Jackson*, 55 Van Natta 2421, 2422 (2003); *Mark R. Gescher*, 55 Van Natta 1956 (2003) (ORS 656.278(1)(a) not satisfied where, although treatment (prescription medication) was arguably curative and necessary to enable the claimant to return to work, there was no evidence that the treatment was prescribed in lieu of hospitalization). Consequently, we are unable to authorize reopening of the Own Motion claim.

Accordingly, the request for claim reopening is denied. Claimant's entitlement to medical expenses pursuant to ORS 656.245 regarding her accepted condition is not affected by this order.^{1 2}

IT IS SO ORDERED.

Entered at Salem, Oregon on August 23, 2007

¹ If a party obtains medical evidence that addresses the statutorily required medical treatment (*i.e.*, hospitalization, surgery or curative treatment prescribed in lieu of hospitalization that is necessary to enable the injured worker to return to work) component, that party may request reconsideration of our decision. However, because our authority to reconsider this decision expires within 30 days after the mailing of the Own Motion Order, the reconsideration request must be filed within that 30-day period. OAR 438-012-0065(2).

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