

In the Matter of the Compensation of
STACY FRIERSON, Claimant
Own Motion No. 05-0426M
OWN MOTION ORDER OF DISMISSAL
Unrepresented Claimant
Reinisch et al, Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

The self-insured employer submitted a “Carrier’s Own Motion Recommendation” against claim reopening for “post-aggravation rights” new or omitted medical conditions (L3 compression fracture and L4-5 disc bulge) and for a “worsening” of claimant’s previously accepted low back condition. ORS 656.278(1)(a), (b). Claimant’s aggravation rights have expired.

On September 27, 2005, claimant requested that the employer accept the aforementioned conditions as new/omitted medical conditions related to the December 1996 injury claim. On January 12, 2006, the employer issued a denial regarding the aforementioned “post-aggravation rights” new medical conditions. On March 29, 2006, the employer issued a denial regarding claimant’s “worsened condition” claim. Claimant requested a hearing regarding those denials. (WCB Case No. 06-00286). On January 30, 2006, we deferred action on issues regarding the Own Motion “claim reopening” matters.

On October 12, 2006, the Administrative Law Judge (ALJ) upheld the employer’s denials regarding both the “post-aggravation rights” new/omitted medical conditions and the “worsened condition” claim. Claimant requested Board review of the ALJ’s order and, in an order issued on this date, we have affirmed the ALJ’s order.

“Worsened 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).

¹ Although claim processing regarding claimant’s “worsened condition” and “post-aggravation rights” new medical conditions (“L3 compression fracture and L4-5 disc bulge”) 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 low back condition. The employer issued a denial of the current condition. In order issued on this date, we have affirmed the ALJ's order that upheld that denial. As a result, 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 Conditions

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." See WCB Admin Order 3-2005, eff. January 1, 2006, Order of Adoption, 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 the aforementioned "post-aggravation rights" new/omitted medical conditions. The employer denied the claim. We have affirmed the ALJ's order that upheld the employer's denial.

In accordance with the *Jordan* holding, because claimant's "post-aggravation rights" new/omitted medical conditions have 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 conditions has become moot.

Accordingly, these Own Motion matters are dismissed.

IT IS SO ORDERED.

Entered at Salem, Oregon on February 14, 2007