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In the Matter of the Compensation of  
**EDWARD T. HAINES, Claimant**  
Own Motion No. 06-0150M  
OWN MOTION ORDER  
Welch Bruun & Green, Claimant Attorneys  
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Lowell and Kasubhai.

The SAIF Corporation has submitted a Carrier's Own Motion Recommendation against the reopening of claimant's 1991 claim for a "worsening" of his previously accepted conditions ("lumbosacral strain, L4-5 disc herniation"). *See* ORS 656.278(1)(a). Claimant's aggravation rights have expired. SAIF opposes reopening, contending that claimant's compensable conditions do not require any medical treatment that qualifies for claim reopening. Based on the following reasoning, we find that the claim does not qualify for 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. *Heath A. Wiltfong, 57 Van Natta 3108 (2005)*.

In *Larry D. Little, 54 Van Natta 2536 (2002)*, we concluded that 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. We defined the three qualifying medical treatments listed in ORS 656.278(1)(a) as follows: (1) "Surgery" is defined as an invasive procedure undertaken for a curative purpose that is likely to temporarily disable the worker; and (2) "hospitalization" is defined as a nondiagnostic procedure that requires an overnight stay in a hospital or similar facility. *Little, 54 Van Natta at 2542*. We also found that the third type of qualifying treatment required 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) that 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 August 2006, Dr. Makker, claimant’s attending physician, diagnosed discogenic low back pain at L4-5, and recommended ultrasonic physical therapy. (Ex.12). No further medical evidence regarding treatment recommendations has been received.

Based on our review, the record does not establish that claimant’s conditions 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.<sup>1</sup> 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.

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<sup>1</sup> Claimant has initiated a “post-aggravation rights” new medical condition claim (“discogenic low back condition/pain at L4-5”). However, that “post-aggravation rights” new medical condition has not been “determined to be compensable.” Thus, any consideration of that condition would be premature. See ORS 656.267(3); ORS 656.278(1)(b). Instead, our decision is limited to a review of claimant’s worsening claim for his previously accepted lumbosacral strain and L4-5 disc herniation conditions. Furthermore, our decision is premised on a finding that no hospitalization, surgery or other curative treatment prescribed in lieu of hospitalization that is necessary to enable claimant to return to work as required under ORS 656.278(1)(a) has been rendered or recommended for claimant’s accepted low back condition. Under such circumstances, we are unable to authorize the reopening of claimant’s 1991 low back “worsened” condition claim under ORS 656.278(1)(a).

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Accordingly, the request for claim reopening is denied. Claimant's entitlement to medical expenses pursuant to ORS 656.245 regarding his accepted conditions is not affected by this order.<sup>2</sup>

IT IS SO ORDERED.

Entered at Salem, Oregon on January 18, 2007

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<sup>2</sup> 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).