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In the Matter of the Compensation of  
**NANCY OCHS, Claimant**  
Own Motion No. 07-0171M  
OWN MOTION ORDER REVIEWING CARRIER CLOSURE  
Ernest M Jenks, AAL, Claimant Attorneys  
Andersen & Nyburg, Defense Attorneys

Reviewing Panel: Members Langer and Weddell.

Claimant requests review of a November 13, 2007 Own Motion Notice of Closure that did not award scheduled permanent disability for her “post-aggravation rights” new/omitted medical condition (“left carpal tunnel syndrome”).<sup>1</sup> On review, claimant contends that she is entitled to an increased scheduled permanent partial disability (PPD) award. We affirm the Notice of Closure.

FINDINGS OF FACT

On December 1, 1997, claimant began experiencing symptoms in her right and left hands. The insurer accepted nondisabling right carpal tunnel syndrome (CTS) on June 23, 1998. Claimant’s aggravation rights have expired.

On October 26, 2007, we authorized the reopening of claimant’s claim under ORS 656.278(1)(b) for a “post-aggravation rights” new/omitted medical condition (“left carpal tunnel syndrome”).

On November 2, 2007, Dr. DiPaola, claimant’s attending physician, performed a closing examination. He found that claimant’s left CTS condition was medically stationary without restrictions or significant impairment. A November 13, 2007 Own Motion Notice of Closure did not award PPD for the left carpal tunnel syndrome condition. Claimant requested review of the November 13, 2007 Notice of Closure and the appointment of a medical arbiter. On June 6, 2007, we issued an Interim Own Motion Order Postponing Action on Review of Carrier Closure to obtain a medical arbiter examination. *Nancy Ochs*, 59 Van Natta 2940 (2007).

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<sup>1</sup> Claimant’s December 1, 1997 claim was accepted as a nondisabling claim. Thus, claimant’s aggravation rights expired on December 1, 2002. ORS 656.273(4)(b). Therefore, when claimant filed her claim on June 1, 2005, the claim was within our Own Motion jurisdiction. ORS 656.278(1). On October 26, 2007, we reopened claimant’s Own Motion claim for a “post-aggravation rights” new/omitted medical condition (“left carpal tunnel syndrome”). On November 13, 2007, the insurer issued its Notice of Closure.

On January 31, 2008, Dr. Sohlberg, the medical arbiter, examined claimant. He found full and symmetrical ranges of motion in both wrists, 5/5 muscle strength, intact sensation with two-point discrimination at 5 mm throughout, and no limitations to claimant's ability to repetitively use her hands.

### CONCLUSIONS OF LAW AND OPINION

The claim was reopened for the processing of the "post-aggravation rights" new/omitted medical condition ("left carpal tunnel syndrome"). Such a claim may qualify for payment of permanent disability compensation. ORS 656.278(1)(b); *Goddard v. Liberty Northwest Ins. Corp.*, 193 Or App 238 (2004); *Jimmy O. Dougan*, 54 Van Natta 1213, *on recons*, 54 Van Natta 1552 (2002), *aff'd*, *Dougan v. SAIF*, 193 Or App 767, *vacated*, 339 Or 1 (2005).<sup>2</sup>

The PPD limitation set forth in ORS 656.278(2)(d) applies where there is (1) "additional impairment" to (2) "an injured body part" that has (3) "previously been the basis of a [PPD] award."<sup>3</sup> Here, all three factors are not satisfied regarding claimant's left CTS. Claimant has not previously received a PPD award for her left CTS. Consequently, the ORS 656.278(2)(d) limitation does not apply.

Accordingly, we proceed with our determination of claimant's permanent disability. Claimant's claim was closed by a Notice of Closure dated November 13, 2007. Thus, the applicable standards are found in WCD Admin. Order 05-074 (eff. January 1, 2006).

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<sup>2</sup> On review, the *Dougan* Court vacated the Court of Appeals decision and dismissed the claimant's petition for review, finding that, pursuant to ORS 656.278(4), a claimant is not entitled to judicial review of an Own Motion order that does not diminish or terminate a former award. Effective January 1, 2006, the Legislature amended ORS 656.278(4) to permit any party to appeal an Own Motion Order. See House bill 2294, sections 2, 4.

<sup>3</sup> ORS 656.278(2)(d) provides:

“(2) Benefits provided under section (1) of this section:

“\* \* \* \* \*

“(d) May include permanent disability benefits for additional impairment to an injured body part that has previously been the basis of a permanent partial disability award, but only to the extent that the permanent partial disability rating exceeds the permanent partial disability rated by the prior award or awards.”

For the purpose of rating claimant's PPD, only the opinion of claimant's attending physician at the time of claim closure, any findings with which he concurred, and the medical arbiter's findings may be considered. See ORS 656.245(2)(b)(B); *Tektronix, Inc. v. Watson*, 132 Or App 483 (1995); *Koitzsch v. Liberty Northwest Ins. Corp.*, 125 Or App 666 (1994).

Here, the medical arbiter, Dr. Sohlberg, opined that claimant was without permanent impairment.

Claimant contends that the rest of the record supports a permanent disability award. However, Dr. DiPaola, claimant's attending physician, found normal ranges of motion, 5/5 motor function, intact sensation including two-point discrimination at 5 mm on the palmar surfaces of all digits of both hands. (Ex. 55-2). He opined that claimant had no significant impairment in her ability to repetitively use her right upper extremity as a result of her injury, and no restrictions in sitting, standing, or walking. (*Id.*) He also opined that claimant had no restrictions in any activities of stooping, bending, crouching, crawling, kneeling, twisting, climbing, balancing, reaching, pushing, pulling, or working the same number of hours as worked at the time of injury. (Ex. 55-3). Accordingly, Dr. DiPaola released claimant to "any and all activity without restriction" due to her accepted carpal tunnel syndrome. (Ex. 55-2).

Because neither Dr. Sohlberg nor Dr. DiPaola found that claimant was permanently impaired due to her compensable injury, the record does not establish that she is entitled to an award of permanent disability. Accordingly, we affirm the November 13, 2007 Notice of Closure.

IT IS SO ORDERED.

Entered at Salem, Oregon on April 24, 2008