
In the Matter of the Compensation of
MARK H. HARDIE, Claimant
Own Motion No. 08-0104M
INTERIM OWN MOTION ORDER POSTPONING ACTION ON REVIEW OF
CARRIER CLOSURE
Hollander & Lebenbaum, Claimant Attorneys
Law Offices of Robert S Dorband, Defense Attorneys

Reviewing Panel: Members Weddell and Langer.

Claimant requests review of the July 9, 2008 Notice of Closure that did not award permanent disability for his “post-aggravation rights” new/omitted medical conditions (“left knee torn medial meniscus, left knee chondromalacia of the femoral condyle and osteoarthritis of the left knee”). On review, claimant contends that he is entitled to an increased permanent partial disability (PPD) award and seeks the appointment of a medical arbiter.

FINDINGS OF FACT

On December 10, 1992, claimant sustained a compensable left knee injury. His aggravation rights have expired.

On July 9, 2008, the self-insured employer voluntarily reopened claimant’s claim for “post-aggravation rights” new medical conditions (“left knee torn medial meniscus, left knee chondromalacia of the femoral condyle and osteoarthritis of the left knee”). ORS 656.278(5); ORS 656.278(1)(b).

A July 9, 2008 Own Motion Notice of Closure did not award PPD for the aforementioned “post-aggravation rights” new medical conditions.

Claimant has requested review of the July 2008 Notice of Closure, contending that he is entitled to additional PPD. In addition, he seeks the appointment of a medical arbiter.

CONCLUSIONS OF LAW AND OPINION

Claimant requests review of the employer’s claim 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).

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 conditions ("left knee torn medial meniscus, left knee chondromalacia of the femoral condyle and osteoarthritis of the left knee"), the only conditions for which claimant is presently entitled to a rating of PPD benefits under ORS 656.278(1)(b) and ORS 656.278(2)(d).¹

Following completion of the medical arbiter process, and the Board's receipt of a copy of the medical arbiter report, a supplemental briefing schedule will be implemented to allow the parties an opportunity to address the effect, if any, the arbiter's report has 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 August 13, 2008

¹ 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.