
In the Matter of the Compensation of
FLOYD A. OWENS, Claimant
Own Motion No. 08-0107M
OWN MOTION ORDER
Malagon Moore et al, Claimant Attorneys
The Law Office of Gress & Clark LLC, Defense Attorneys

Reviewing Panel: Members Lowell and Biehl.

The self-insured employer has submitted its Own Motion Recommendation against the reopening of claimant's 2002 cervical and thoracic injury claim for a "worsening" of his previously accepted conditions. *See* ORS 656.278(1)(a). Claimant's aggravation rights have expired. The employer 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 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. *Heath 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 claim 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 July 2008, claimant sought treatment for increased left arm numbness and left neck and shoulder pain. Dr. Weller performed electrodiagnostic tests and noted that claimant was unable to work due to his current symptomatology. She recommended that claimant return to Dr. Gallo, claimant’s attending physician, for consideration of surgical intervention. Dr. Weller did not recommend any additional physical therapy or conservative treatment and opined that, if claimant was not a candidate for surgery, then consideration should be given for a repeat physical capacities evaluation to determine his physical capacity level.

On August 11, 2008, claimant returned to Dr. Gallo. Noting that claimant had complaints of numbness in the left forearm and left hand, Dr. Gallo opined that these symptoms were not related to his compensable conditions. Dr. Gallo explained that because claimant had prior carpal tunnel releases, his arm and hand symptoms may be related to ulnar neuritis or carpal tunnel syndrome. She recommended nerve conduction studies. Additionally, because claimant also complained of left leg numbness and weakness, Dr. Gallo recommended a lumbar MRI.

After conducting our review, the record does not establish that the statutory requirements for reopening of claimant’s “worsened condition” claim have been satisfied. 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.¹

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

IT IS SO ORDERED.

Entered at Salem, Oregon on August 27, 2008

¹ The record does not demonstrate that claimant has initiated a "post-aggravation rights" new or omitted medical condition claim. Thus, any consideration of "unclaimed" conditions 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 cervical and thoracic 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 cervical and thoracic conditions. Under such circumstances, we are unable to authorize the reopening of claimant's 2002 claim under ORS 656.278(1)(a).

If claimant wishes to initiate a new or omitted medical condition claim, he may request formal written acceptance of the claim from the employer. ORS 656.267(1). If the employer receives such a claim, and the claim is "determined to be compensable," it must be processed according to the Board's rules. *See* 438-012-0001(4); OAR 438-012-0030(1); *James W. Jordan*, 58 Van Natta 34, 37 (2006).

² If a party obtains evidence that addresses the "medical treatment" component of the statutory standard that is lacking from the current record, that party may request reconsideration of our decision. However, because our authority to reconsider this decision expires within 30 days after the mailing date of the Own Motion Order, the reconsideration request must be filed within that 30-day period. OAR 438-012-0065(2).