In the Matter of the Compensation of
KERRIE E. CONNELLY, Claimant
Own Motion No. 07-0168M
OWN MOTION ORDER
Randy Elmer, Kryger et al, Claimant Attorneys
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Langer and Biehl.

The SAIF Corporation has submitted its Own Motion Recommendation against the reopening of claimant's claim for a "worsening" of her previously accepted low back conditions ("lumbosacral strain with recurrent disc herniation L5-S1"). *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 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. *Health 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 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 October 2007, claimant sought treatment for low back pain. Diagnosing chronic low back pain secondary to a failed back syndrome, Dr. Turner, claimant's attending physician, prescribed pain medication. He also noted that claimant had been accepted into a pain management program, which was scheduled to start in late November 2007. Finally, Dr. Turner completed an 827 Form, changing the designation of claimant's current care from palliative to "an aggravation."

After conducting our review, the record does not establish that claimant's accepted low back 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 her to return to work. 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] [2]

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[1] If claimant presents evidence that addresses the "medical treatment" component of the statutory standard, she 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).

[2] The record does not demonstrate that claimant has initiated a "post-aggravation rights" new 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

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

IT IS SO ORDERED.

Entered at Salem, Oregon on January 23, 2008

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worsening claim for her previously accepted lumbosacral strain with recurrent disc herniation L5-S1. 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 lumbosacral strain with recurrent disc herniation L5-S1. Under such circumstances, we are unable to authorize the reopening of claimant's 2000 claim under ORS 656.278(1)(a).

If claimant wishes to initiate a new or omitted medical condition claim, she may request formal written acceptance of the claim from SAIF. ORS 656.267(1). If SAIF 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).