

In the Matter of the Compensation of
DAVID J. FUNK, Claimant
Own Motion No. 08-0139M
OWN MOTION ORDER REVIEWING CARRIER CLOSURE
Unrepresented Claimant
Liberty NW Ins Corp, Carrier

Reviewing Panel: Members Weddell and Lowell.

Claimant requests review of the August 6, 2008 Notice of Closure that did not award permanent disability for his “worsened” conditions.¹ Asserting that an examination should be performed to assess the reduced movement in his left foot, claimant seeks a permanent partial disability award. Based on the following reasoning, we affirm the Notice of Closure.

When a claim has been reopened pursuant to our Own Motion authority for a “worsened condition” under ORS 656.278(1)(a), the subsequent closure of that claim pertains only to the reopened “worsened condition” claim. *Dennis D. Kessel*, 55 Van Natta 3651 (2003); *Clayton L. Sutherland*, 55 Van Natta 2694 (2003); *Ginney E. Etherton*, 55 Van Natta 2216 (2003).

Here, the claim was reopened for a “worsened condition” that was in Own Motion status. *See* ORS 656.278(1)(a). Accordingly, the insurer’s Notice of Closure pertained only to the claim for a “worsened condition.” *See Ginny E. Etherton*, 55 Van Natta at 2217.

There is no indication that claimant initiated a new or omitted medical condition claim.² In any event, the insurer neither voluntarily reopened the claim for a “post-aggravation rights” new or omitted medical condition nor

¹ Claimant’s September 13, 1989 claim was accepted as a disabling claim and was first closed on April 12, 1990. Thus, claimant’s aggravation rights expired on April 12, 1995. Therefore, when claimant sought claim reopening in February 2006, the claim was within our Own Motion jurisdiction. ORS 656.278(1). Consistent with our statutory authority, on December 4, 2007, we issued our Own Motion Order authorizing the reopening of a “worsened condition” claim and noted that when claimant was medically stationary, the insurer should close the claim pursuant to OAR 438-012-0055. (WCB Case No. 07-0146M). On August 6, 2008, the insurer issued its Notice of Closure.

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 worsening claim for his previously accepted bilateral feet conditions.

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

submitted a Carrier's Own Motion Recommendation for or against reopening such a claim. In the absence of such events, the August 2008 Notice of Closure is limited to the "worsening" claim that was reopened on December 4, 2007. *Arvin D. Lal*, 55 Van Natta 816 (2003).

In conclusion, because the claim was reopened for a worsened condition that was in Own Motion status, claimant is not statutorily entitled to a permanent disability award. *See Goddard v. Liberty Northwest Ins. Corp.*, 193 Or App 238 (2004). Furthermore, if claimant's request for an "examination" is interpreted as a request for the appointment of a medical arbiter, that request is denied because claimant is not entitled to permanent disability benefits for a worsened condition. *Ginney E. Etherton*, 55 Van Natta at 2218.

Accordingly, we affirm the Notice of Closure.³

IT IS SO ORDERED.

Entered at Salem, Oregon on November 19, 2008

³ Finally, inasmuch as claimant is unrepresented, he may wish to consult the Workers' Compensation Ombudsman, whose job it is to assist injured workers. He may contact the Workers' Compensation Ombudsman, free of charge, at 1-800-927-1271, or write to:

WORKERS' COMPENSATION OMBUDSMAN
DEPT OF CONSUMER & BUSINESS SERVICES
PO BOX 14480
Salem, OR 97309-0405