
In the Matter of the Compensation of
DALE T. DREYER, Claimant
Own Motion No. 09-0101M
OWN MOTION ORDER
Unrepresented Claimant
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Weddell and Lowell.

The SAIF Corporation has submitted its Own Motion Recommendation against the reopening of claimant's claim for a "worsening" of his previously accepted condition ("low back strain"). See ORS 656.278(1)(a). Claimant's aggravation rights have expired. SAIF opposes reopening, contending, among other issues, 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. *Clair E. Fox*, 58 Van Natta 1506 (2006).

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 January 2009, claimant sought treatment for left leg pain. Diagnosing left-sided back pain with radiation down the left leg, Dr. Hoang prescribed pain medication. (Ex. 27). In February 2009, claimant sought treatment with Dr. Gambee, who recommended an MRI. (Ex. 29).

In March 2009, Dr. Kim, another treating physician, diagnosed “radiculitis lumbar left lumbar radiculopathy.” Dr. Kim explained that claimant’s low back condition was exacerbated by his left total knee replacement due to a leg length discrepancy and recommended orthotics. He also prescribed epidural injections. (Ex. 32).

On May 12, 2009, Dr. Kim noted that claimant’s low back pain had worsened and recommended an urgent MRI. He also prescribed pain medication. (Ex. 48-3). Subsequently, claimant underwent several epidural injections. (Exs. 54, 61-1, 61-3).

After conducting our review, the record does not establish that claimant’s accepted low back condition 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 him to return to work. ORS 656.278(1)(a); *Larry D. Little*, 54 Van Natta 2536 (2002). 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 *Danny L. Johnson*, 56 Van Natta 129 (2004) (epidural steroid injection did not constitute hospitalization, surgery or other curative treatment prescribed in lieu of hospitalization that was necessary to enable the claimant to return to work where medical evidence did not establish that the injection was provided in lieu of hospitalization or regarded as necessary to enable the claimant to return to work); *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}

¹ 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 condition (“low back strain”). 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 has been rendered or recommended for claimant’s accepted conditions. See ORS 656.278(1)(a). Under such circumstances, we are unable to authorize the reopening of claimant’s 1987 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 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).

Accordingly, the request for claim reopening is denied.³ Claimant's entitlement to medical expenses pursuant to ORS 656.245 regarding his accepted condition is not affected by this order.⁴

IT IS SO ORDERED.

Entered at Salem, Oregon on August 20, 2009

² Additionally, SAIF contended that claimant was not in the work force at the time of disability. ORS 656.278(1)(a). In this particular case, this matter need not be addressed because even if the "work force" issue was found in claimant's favor, the record would still be insufficient to support a claim reopening under ORS 656.278(1)(a) for the reasons expressed above.

³ If claimant presents evidence that addresses the "medical treatment" and "work force" components of the statutory standard, he 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).

⁴ Finally, inasmuch as claimant is unrepresented, he may wish to consult the Ombudsman for Injured Workers, whose job it is to assist injured workers. He may contact the Ombudsman, free of charge, at 1-800-927-1271, or write to:

OMBUDSMAN FOR INJURED WORKERS
DEPT OF CONSUMER & BUSINESS SERVICES
PO BOX 14480
SALEM, OR 97309-0405