

In the Matter of the Compensation of
BOBBIE J. LARUE, Claimant
Own Motion No. 09-0093M
OWN MOTION ORDER
Glen J Lasken, AAL, Claimant Attorneys
Liberty NW Ins Corp, Carrier

Reviewing Panel: Members Biehl and Langer.

The insurer has submitted claimant's request for reopening of her Own Motion claim for a "post-aggravation rights" new medical condition ("C6-7 disc herniation"). ORS 656.278(1)(b). Claimant's aggravation rights have expired. The insurer recommends reopening of claimant's 2002 claim.

On June 3, 2009, the insurer issued a Modified Notice of Acceptance to include the aforementioned "post-aggravation rights" new/omitted medical condition. Thus, claimant's "post-aggravation rights" new/omitted medical condition ("C6-7 disc herniation") has been determined to be compensable. *See* ORS 656.278(1)(b); OAR 438-012-0001(4)(a); *James W. Jordan*, 58 Van Natta 34 (2006).

There are two requirements that must be satisfied for the reopening of an Own Motion claim for a "post-aggravation rights" new or omitted medical condition claim under ORS 656.278(1)(b). First, the new or omitted medical condition claim must have been initiated after the expiration of claimant's aggravation rights under ORS 656.273. ORS 656.267(3). Second, the new or omitted medical condition must be "determined to be compensable." *Id.*

Based on our review of this record, we find that claimant's 2002 claim has satisfied the statutory requirements for reopening under ORS 656.278(1)(b).¹

¹ The insurer also recommended reopening for a "worsened condition" claim. However, among the requirements for claim reopening under ORS 656.278(1)(a), there must be a *worsening* of a *previously accepted condition* that requires 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. *Mary L. Streckel*, 58 Van Natta 3046 (2006); *Harold B. Hamilton*, 58 Van Natta 1338 (2006).

Here, the record does not establish that claimant's current need for medical treatment was due to a worsening of her previously accepted "right cervical and trapezius strain, herniated discs at C4-5 and C5-6" conditions. Instead, the medical treatment concerned "C6-7 disc herniation," which is claimant's "post-aggravation rights" new/omitted medical condition.

Accordingly, we authorize the reopening of claimant's Own Motion claim for a "post-aggravation rights" new/omitted medical condition ("C6-7 disc herniation") under ORS 656.278(1)(b) for the insurer to provide benefits in accordance with law.² When claimant's condition is medically stationary and there is sufficient information to determine permanent disability, the insurer shall close the claim pursuant to OAR 438-012-0055, including the payment of permanent disability compensation, if any, determined to be due under ORS 656.278(1)(b) and (2)(d) for the new/omitted medical condition.

Claimant's attorney is allowed an approved fee in the amount of 25 percent of any increased temporary disability compensation resulting from this order, not to exceed \$1,500, payable by the insurer directly to claimant's attorney.

IT IS SO ORDERED.

Entered at Salem, Oregon on July 7, 2009

Under these circumstances, the record does not satisfy the criteria set forth in ORS 656.278(1)(a) required to reopen a "worsened condition" claim for claimant's previously accepted "right cervical and trapezius strain, herniated discs at C4-5 and C5-6" conditions. Accordingly, we decline to authorize the reopening of claimant's Own Motion claim insofar as it concerns a "worsened condition."

Brian G. McVicker, 60 Van Natta 1578 (2008)

² Other potential issues mentioned in the insurer's submission and claimant's response are claim processing matters that may later arise and are the insurer's responsibility in the first instance. *Stacy Thompson*, 60 Van Natta 1085 (2008); *Tamara Kramer-Fischer*, 58 Van Natta 1456 (2006); *Duane L. Leafdahl*, 54 Van Natta 1796, 1799 (2002).