

In the Matter of the Compensation of  
**CHRISTOPHER A. VOLKER, Claimant**

Own Motion No. 09-0094M

OWN MOTION ORDER

Malagon Moore et al, Claimant Attorneys

Liberty NW Ins Corp, Carrier

Reviewing Panel: Members Biehl and Lowell.

The insurer has submitted claimant's request for reopening of his Own Motion claim for a "post-aggravation rights" new medical condition ("right knee patellofemoral arthrosis"). ORS 656.278(1)(b). Claimant's aggravation rights have expired. The insurer recommends reopening of claimant's 1996 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 ("right knee patellofemoral arthrosis") 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 1996 claim has satisfied the statutory requirements for reopening under ORS 656.278(1)(b).<sup>1</sup>

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<sup>1</sup> The insurer also recommended against reopening for a "worsened condition" claim. The insurer opposes the reopening of the claim, contending that claimant was not in the work force at the time of the current disability. 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 his previously accepted "right knee sprain and right knee medial meniscal tear" conditions. Instead, the medical treatment concerned "right knee patellofemoral arthrosis," which is claimant's "post-aggravation rights" new/omitted medical condition.

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Accordingly, we authorize the reopening of claimant's the Own Motion claim for a "post-aggravation rights" new/omitted medical condition ("right knee patellofemoral arthrosis") under ORS 656.278(1)(b) for the insurer to provide benefits in accordance with law.<sup>2</sup> 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 15, 2009

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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 knee sprain and right knee medial meniscal tear" conditions. Accordingly, we decline to authorize the reopening of claimant's Own Motion claim insofar as it concerns a "worsened condition."

In light of this conclusion, it is unnecessary to address insurer's contention regarding claimant's "work force" status. *Marlene A. Waltman*, 55 Van Natta 3637 (2003) (claimant's "work force" status is not a criteria necessary for reopening under ORS 656.278(1)(b)); *Judy M. Wall*, 54 Van Natta 811 (2002) (same).

<sup>2</sup> 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).