

In the Matter of the Compensation of
STEVEN L. BAKER, Claimant
Own Motion No. 09-0007M
INTERIM OWN MOTION ORDER
Jim Dodge, Dodge Law Firm, Claimant Attorneys
Maher & Tolleson LLC, Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

Claimant has inquired into the status of his Own Motion “time loss” matter. In response, the insurer contends that claimant’s request does not require processing under the Board’s Own Motion rules. Based on the following reasoning, we find that claimant has made a “worsened condition” claim concerning his 1996 claim with the insurer. Accordingly, the insurer is directed to promptly process claimant’s “worsened condition” claim pursuant to ORS 438-012-0030.

Under OAR 438-012-0001(2)(a), a “worsened condition” claim is defined as a “written request by or on behalf of a claimant for temporary disability compensation or claim reopening regarding a worsened condition that has been determined to be compensable and that was initiated after the rights under ORS 656.273 expired.” An insurer is deemed to have notice of such a claim when one of the following is submitted to the insurer by or on behalf a claimant:

- (a) “[a] written request for temporary disability compensation or claim reopening regarding a worsened condition that has been determined to be compensable as defined under OAR 438-012-0001(3) and that was initiated after the rights under ORS 656.273 expired”; or
- (b) “[a]ny document submitted to the insurer after the expiration of aggravation rights regarding a worsened condition that has been determined to be compensable as defined under OAR 438-012-0001(3) that reasonably notifies the insurer that the compensable injury results in the claimant’s inability to work and requires hospitalization or inpatient or outpatient surgery, or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the claimant to return to work.”¹ OAR 438-012-0020(3).

¹ OAR 438-012-0001(3) provides that for a “worsened condition” claim, “determined to be compensable” means “(a) [t]he insurer does not dispute compensability of or responsibility for the claim or condition under ORS 656.262 or 656.308(2); or (b) [a]n order from an Administrative Law Judge, the Board, or the court has found the claim or condition compensable and the responsibility of the insurer.”

Here, the insurer does not dispute that it has accepted an L3-4 disc herniation claim, for which claimant's aggravation rights under ORS 656.273 have expired. We subsequently determined that claimant's current medical services claim for his L3-4 disc condition was compensable. *Steven L. Baker*, 59 Van Natta 2680 (2007). Claimant thereafter requested Own Motion "time loss" benefits from the insurer.

We find that such a request qualifies as one for temporary disability compensation or claim reopening regarding a worsened condition that has been determined to be compensable and that was initiated after claimant's aggravation rights have expired. *See* OAR 438-012-0001(2)(a). Therefore, claimant has satisfied the requirements for initiating a "worsened condition" claim. The insurer does not dispute that it received this request. Accordingly, it must process claimant's Own Motion "worsened condition" claim. If the insurer believes that the requirements for claim reopening have not been satisfied, it may recommend against the reopening of the worsened condition claim. *See* OAR 438-012-0030(1)(b). It must, however, process the claim.

Accordingly, the insurer is directed to promptly process claimant's "worsened condition" claim.

IT IS SO ORDERED.

Entered at Salem, Oregon on March 31, 2009