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In the Matter of the Compensation of  
**NESSAN M. LEAHY, Claimant**  
Own Motion No. 09-0111M  
OWN MOTION ORDER  
Gary Borden, AAL, Claimant Attorneys  
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Langer and Biehl.

The SAIF Corporation has submitted claimant's request for reopening of his Own Motion claim for a worsened condition. ORS 656.278(1)(a). Claimant's aggravation rights have expired. Based on the following reasoning, we reopen the claim.

SAIF initially recommended against reopening, contending that claimant's low back condition had not worsened resulting in an inability to work. In response to SAIF's recommendation, claimant submitted a medical report, which stated that due to the ruptured lumbar disc, he was unable to work from December 15, 2008 through May 5, 2009.<sup>1</sup>

After reviewing this record, we are persuaded that claimant meets the criteria necessary for his claim to be reopened for a "worsening" of his previously accepted low back condition ("left sided disc herniation at L5-S1"). ORS 656.278(1)(a); *Robert A. Boehm, Jr.*, 58 Van Natta 168 (2006).<sup>2</sup>

Accordingly, we authorize the reopening of the claim for SAIF to process in accordance with law.<sup>3</sup> When claimant's condition is medically stationary, SAIF shall close the claim pursuant to OAR 438-012-0055.

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<sup>1</sup> Claimant underwent low surgery ("left L5-S1 decompression") on January 3, 2009.

<sup>2</sup> The record does not demonstrate that claimant has initiated a "post-aggravation rights" new or omitted 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 low back condition ("left sided disc herniation at L5-S1").

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 OAR 438-012-0001(4); OAR 438-012-0030(1); *James W. Jordan*, 58 Van Natta 34, 37 (2006).

<sup>3</sup> SAIF requests that we address claimant's entitlement to temporary disability benefits. Based on the following reasoning, we decline that request.

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 SAIF directly to claimant's attorney.

IT IS SO ORDERED.

Entered at Salem, Oregon on October 15, 2009

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In essence, SAIF seeks guidance regarding a claim processing matter. It is not the Board's role to provide advisory opinions on such matters. Rather, it is a carrier's obligation to perform its claim processing function in accordance with applicable statutes and rules. Thereafter, if a claimant is dissatisfied with the carrier's actions or inactions in response to a Board order, he may seek Own Motion relief from the Board. At that time, the Board could then consider the parties' claim processing dispute. *See Mark Cavazos*, 54 Van Natta 184 (2002) (Board declined to provide advisory opinion on claim processing matter); *Larry L. Wallace*, 56 Van Natta 2075, 2076 n2 (2004) same; *Cavazos* applied).