
In the Matter of the Compensation of
RAUL DUGGINS, Claimant
Own Motion No. 08-0124M
OWN MOTION ORDER REVIEWING CARRIER CLOSURE ON
RECONSIDERATION

Roger Ousey, Strooband & Ousey PC, Claimant Attorneys
Holly O'Dell, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

On July 13, 2009, we abated our June 11, 2009 order that modified a July 9, 2008 Own Motion Notice of Closure to award additional scheduled permanent partial disability (PPD) for claimant's left leg. We abated our order to consider the SAIF Corporation's assertion that the standing/walking limitation pursuant to OAR 436-035-0230(14) did not apply to this claim.¹ Having reviewed the parties' arguments, we proceed with our reconsideration.

Based on the following reasoning, we maintain that the Notice of Closure is modified to award an additional 16 percent scheduled PPD for loss of use or function of the left leg.

In requesting review of the Own Motion Notice of Closure, claimant sought an impairment value of 15 percent for a standing/walking limitation, asserting that he was precluded from standing/walking for more than 2 hours at a time. On reconsideration, SAIF renews its argument that claimant is not entitled to such an award because his injury was to the low back, as opposed to his knee/leg. However, consistent with OAR 436-035-0005(6), conditions that are the direct medical sequelae of the accepted conditions are included in the rating of permanent disability, unless they have been specifically denied. *See also* ORS 656.268(14).²

¹ Claimant's claim was closed by an Own Motion Notice of Closure dated July 9, 2008. Thus, the applicable standards are found in WCD Admin. Order 07-060 (eff. January 1, 2008). *See* OAR 436-035-0003(1).

² ORS 656.268(14) states:

“Conditions that are direct medical sequelae to the original accepted condition shall be included in rating permanent disability of the claim unless they have been specifically denied.”

OAR 436-035-0005(6) states in pertinent part:

“‘Direct medical sequela’ means a condition which originates or stems from the compensable injury or disease that is clearly established medically. Disability from direct medical sequelae is rated under these rules and ORS 656.268(14).”

Here, the record persuasively establishes that claimant’s left leg condition stems from his accepted S1 radiculopathy. As such, his left leg condition constitutes a “direct medical sequelae” and is ratable under the Director’s disability standards. *See Office Depot, Inc. v. Joerres*, 195 Or App 756, 760 (2004), *rev den*, 338 Or 680 (2005) (laxity in the right medial ligament rated as the direct medical sequelae of a right knee strain and “partial tear anterior cruciate ligament right knee,” where the arbiters unambiguously stated that the impairment was due to the accepted conditions).

OAR 436-035-0230(14) states in pertinent part:

“When there is an injury to the knee/leg and objective medical evidence establishes the worker cannot walk or stand or both for a total of more than two hours in an 8-hour period, the award is 15% of the knee/leg[.]”

As discussed above, the leg condition is the “direct medical sequelae” of the S1 radiculopathy. The radiculopathy has been accepted as a consequence/residual of the compensable injury. Under such circumstances, we conclude that there has been an “injury to the knee/leg” as required by OAR 436-035-0230(14). Such an interpretation is consistent with ORS 656.268(14), which mandates that a “direct medical sequelae” of an accepted condition be rated under the Director’s disability standards.

Furthermore, Dr. Maukonen unambiguously concluded that claimant was prevented from walking or standing for more than 2 hours in an 8 hour period due to the accepted S1 radiculopathy. Consequently, Dr. Maukonen’s opinion satisfies OAR 436-035-0230(14).³

³ In any event, Dr. Maukonen found a partial loss of sensation of the plantar surface of the fourth and fifth left toes, as well as the lateral plantar aspect of the left foot. Consequently, in the absence of contrary medical evidence, Dr. Maukonen’s report supports a conclusion that claimant sustained an “injury” to his left leg, which has resulted in an inability to stand/walk.

In light of the foregoing, we are not persuaded that a “direct” injury to the left leg is required where the leg condition constitutes a “direct medical sequelae” of the accepted “post-aggravation” rights new medical condition (here, S1 radiculopathy). *Dennis E. Nelson*, 57 Van Natta 1986, 1993 (2005) (impairment that was caused by the accepted compensable conditions and any direct medical sequelae is rated). Such a reading is inconsistent with application of OAR 436-035-005(6) and ORS 656.268(14).

In reaching this conclusion, we acknowledge that not every “standing/walking limitation” results in a PPD award. *See e.g., John E. Harp*, 61 Van Natta 1520 (2009) (no “standing/walking limitation” value awarded where medical arbiter found no such limitation, despite attending physician’s opinion to the contrary); *Luis M. Barbosa*, 60 Van Natta 3425 (2008) (no “standing/walking limitation” value awarded where medical arbiter did not describe such limitation as *permanent*). Yet, under these particular circumstances, for the reasons expressed above, the Director’s disability standards authorize an award for a “standing/walking limitation” impairment value for claimant’s left leg condition. *See* OAR 436-035-0230(14).⁴

Claimant’s counsel is entitled to an assessed fee for services on reconsideration. ORS 656.382(2); *Antonio L. Martinez*, 61 Van Natta 1892 (2009). After considering the factors set forth in OAR 438-015-0010(4) and applying them to this case, we find that a reasonable fee for claimant’s attorney’s services on reconsideration is \$500, payable by SAIF. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by claimant’s response to SAIF’s reconsideration motion), the complexity of the issue, the value of the interest involved, and the risk that claimant’s counsel may go uncompensated.

Accordingly, as supplemented herein, we republish our June 11, 2009 order. For services on reconsideration, claimant’s attorney is awarded \$500, payable by SAIF. The parties’ rights of appeal shall begin to run from the date of this order.⁵

IT IS SO ORDERED.

Entered at Salem, Oregon on September 10, 2009

⁴ Conversely, had the medical record in this particular case not supported the existence of a “direct medical sequelae” from an accepted condition, no “injury” would be established and, as such, no “standing/walking limitation” impairment value would have been available.

⁵ To date, claimant’s total scheduled PPD award for his left leg is 23 percent (34.5 degrees).