

In the Matter of the Compensation of
DAVIS W. DAWLEY, Claimant

WCB Case No. 09-06077

ORDER ON REVIEW

Hooton Wold & Okrent LLP, Claimant Attorneys
Bruce A Bornholdt, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Biehl and Langer.

Claimant requests review of Administrative Law Judge (ALJ) Sencer's order that affirmed an Order on Reconsideration that found that his left hip injury claim was not prematurely closed. On review, the issue is premature closure.

We adopt and affirm the ALJ's order with the following supplementation.

In affirming the Order on Reconsideration, the ALJ found that the May 26, 2009 Notice of Closure was not premature because the SAIF Corporation had issued a major contributing cause denial of the accepted combined conditions, and there was sufficient information to close the claim. The ALJ reasoned that controlling case precedent interpreting ORS 656.268(1)(b), as conceded by claimant, allows a carrier to close a claim under such circumstances.

As claimant concedes at hearing and on review, current case law interpreting ORS 656.268(1)(b) permits claim closure based on the issuance of a combined condition denial, provided there is sufficient information to determine permanent disability. *See Johnathan M. Humphrey*, 61 Van Natta 357, 358-59 (2009). Moreover, any appeal of denied conditions shall not delay claim closure pursuant to ORS 656.268. ORS 656.262(7)(c). Instead, if a condition is found compensable after claim closure, the carrier shall reopen the claim for processing regarding that condition. *Id.*

Our task on review of this Notice of Closure is to determine whether the reconsideration record establishes that the claim closure was valid. Consistent with the statutory scheme, we do not address questions of compensability, which must be resolved in separate proceedings designed for that purpose. *See Humphrey*, 61 Van Natta at 359 n 3.

Here, pursuant to stipulation, SAIF accepted a "left femoral neck bone bruise combined with one or more qualifying statutory preexisting conditions including arthritis of the left hip" and a "left hip strain combined with one or

more qualifying statutory preexisting conditions including arthritis of the left hip.” (Exs. 8, 9). In April 2009, Dr. Button, claimant’s attending physician, opined that the left hip strain and bone bruise were no longer the major contributing cause of the disability/need for treatment of the combined condition. (Ex. 7). Dr. Button apportioned 100 percent of the impairment findings to the preexisting conditions. (Ex. 10). On May 12, 2009, SAIF denied the combined conditions on the basis that the accepted injury was “no longer the major contributing cause of [the] combined left hip condition.” (Ex. 11).¹ On May 26, 2009, SAIF issued a Notice of Closure awarding no permanent disability. (Ex. 13).

The reconsideration record establishes that SAIF’s denial issued before claim closure and, further, supports a conclusion that there was sufficient information to determine permanent impairment. Such circumstances do not invalidate a Notice of Closure. ORS 656.262(7)(b); ORS 656.268(1)(b); OAR 436-030-0020(1)(b)²; OAR 436-030-0034(4) (providing for claim closure when a worker is not medically stationary but a major contributing cause denial has been issued on an accepted combined condition); *Humphrey*, 61 Van Natta at 359-60. Thus, we conclude that the claim was not prematurely closed.

Furthermore, on May 11, 2009, Dr. Button expressly stated that claimant’s accepted combined left femoral neck bone bruise condition was medically stationary on March 5, 2009, and that his accepted combined left hip strain condition was medically stationary on November 3, 2008. (Ex. 10-2). Dr. Button attributed 100 percent of the impairment findings to preexisting conditions. (Ex. 10-3). Under these circumstances, we also find that the claim was not prematurely closed pursuant to ORS 656.268(1)(a) and OAR 436-030-0020(1)(a).

ORDER

The ALJ’s order dated May 4, 2010 is affirmed.

Entered at Salem, Oregon on October 5, 2010

¹ A hearing request was filed regarding the denial. That matter remains pending review. (WCB Case No. 09-03807.)

² Because of claimant’s July 7, 2009 request for reconsideration, the applicable rules are found in WCD Admin. Order 08-054 (eff. July 1, 2008). OAR 436-030-0003(1).