
In the Matter of the Compensation of
NANCY J. FERGUSON, Claimant
Own Motion No. 10-0190M
INTERIM OWN MOTION ORDER POSTPONING ACTION ON REVIEW OF
CARRIER CLOSURE
Swanson Thomas & Coon, Claimant Attorneys
Andersen & Nyburg, Defense Attorneys

Reviewing Panel: Members Langer and Biehl.

Claimant requests review of the July 30, 2010 and March 31, 2011 Notices of Closure that awarded an additional 17 percent (54.4 degrees) unscheduled permanent partial disability (PPD) for her “post-aggravation rights” new/omitted medical conditions (“failed back syndrome, right leg radiculopathy, severe chronic back pain, right sciatic parasthesias or right leg radiculopathy from nerve root irritation secondary to above”). On review, claimant contends that: (1) her conditions were not medically stationary on May 12, 2009 (as found by the Notices of Closure); and (2) she is entitled to an additional PPD award. Claimant also seeks the appointment of a medical arbiter.

FINDINGS OF FACT

On January 6, 1993, claimant sustained a compensable low back injury. To date, she has been awarded 50 percent (160 degrees) unscheduled PPD for her low back. (Exs. 19, 23, 24, 29, 82).

On May 3, 2004, we authorized the reopening of claimant’s Own Motion claim for “post-aggravation rights” new/omitted medical conditions (“failed back syndrome, right leg radiculopathy, severe chronic back pain”). (Ex. 55). *Nancy J. Ferguson*, 56 Van Natta 1499 (2004).

On August 4, 2005, the insurer issued a Modified Notice of Acceptance to include “right sciatic parasthesias or right leg radiculopathy from nerve root irritation secondary to above” as a compensable component of claimant’s Own Motion claim. (Ex. 64).

A July 30, 2010 Own Motion Notice of Closure purportedly awarded an additional 17 percent (54.4 degrees) unscheduled PPD for *all* of the aforementioned “post-aggravation rights” new/omitted medical conditions. (Ex. 82).

On February 7, 2011, we authorized the reopening of claimant's Own Motion claim for a "post-aggravation rights" new/omitted medical condition ("right sciatic parasthesias or right leg radiculopathy from nerve root irritation secondary to above"). *Nancy J. Ferguson*, 63 Van Natta 263 (2011).

A March 31, 2011 Own Motion Notice of Closure: (1) declared claimant's aforementioned conditions medically stationary as of May 12, 2009; and (2) did not award additional unscheduled PPD for the aforementioned "post-aggravation rights" new/omitted medical conditions.

Claimant has requested review of the July 2010 and March 2011 Notices of Closure, contending that her medically stationary date is inaccurate and requesting additional PPD. In addition, she seeks the appointment of a medical arbiter.

CONCLUSIONS OF LAW AND OPINION

Claimant requests review of the insurer's claim closure based on her disagreement with the impairment findings used to rate her disability. In addition, she requests the appointment of a medical arbiter. *See John S. Ross*, 56 Van Natta 3369 (2004); *Edward A. Miranda*, 55 Van Natta 784 (2003).

Consistent with the procedures set forth in *Miranda*, we postpone our review of the Own Motion claim closure pending receipt of a medical arbiter's report.¹ We also refer the claim to the Director to appoint a medical arbiter. The parties shall provide the Director with whatever information the Director deems necessary to assist the medical arbiter, including identification of the accepted "post-aggravation rights" new/omitted medical conditions ("failed back syndrome, right leg radiculopathy, severe chronic back pain, right sciatic parasthesias or right leg radiculopathy from nerve root irritation secondary to above"), the only conditions for which claimant is presently entitled to a rating of PPD benefits under ORS 656.278(1)(b) and ORS 656.278(2)(d).²

¹ We do not interpret claimant's challenge to the "medically stationary date" determined by the Notices of Closure as a contention that her claim was prematurely closed. Rather, we consider her argument as a challenge to the temporary disability award granted in the Notices of Closure. Consequently, our review of the "medically stationary/temporary disability" issues shall also be deferred pending our receipt of the medical arbiter's report and the implementation of a supplemental briefing schedule. *Patrick K. Richards*, 61 Van Natta 2650, 2651, n2 (2009).

² The Appellate Review Unit (ARU) is requested to provide the Board with a copy of the entire written record (including any cover letter or questions to the arbiter from ARU) that it forwards to the medical arbiter.

Following completion of the medical arbiter process, and the Board's receipt of a copy of the medical arbiter report, a supplemental briefing schedule will be implemented to allow the parties an opportunity to address the effect, if any, the arbiter's report has on claimant's request for review of the closure notice. After completion of that schedule, we will proceed with our review.

IT IS SO ORDERED.

Entered at Salem, Oregon on June 22, 2011