
In the Matter of the Compensation of
BENJAMIN A. VANDEMAN, Claimant
Own Motion No. 14-00025M
SECOND OWN MOTION ORDER ON RECONSIDERATION
Ransom Gilbertson Martin et al, Claimant Attorneys
Liberty Mutual Ins, Carrier

Reviewing Panel: Members Johnson and Weddell.

On November 19, 2014, we withdrew our October 22, 2014, which had republished our September 25, 2014 Own Motion Order that declined to award temporary disability benefits for claimant's reopened "post-aggravation rights" new/omitted medical condition claim ("adjustment reaction with depressed mood and major depression"). We took this action to consider claimant's motion for reconsideration, which included an additional report from his current physician. Because the time for the insurer's response has expired, we proceed with our reconsideration.

In declining claimant's previous requests for a temporary disability award, we determined that the record did not persuasively establish that it was futile for him to have sought work during the period preceding his August 13, 2013 "date of disability." In the absence of such a finding, we concluded that claimant's request for temporary disability benefits for this reopened Own Motion claim could not be granted.

In response to our decision, claimant has submitted a medical report from Dr. Fulper, his current physician. Considering claimant's depression from the pain attributable to the previously accepted right shoulder condition, Dr. Fulper opined that claimant stopped working in April 2012 and that, in 2013, it was futile for him to seek employment.

After reviewing Dr. Fulper's un rebutted opinion, we are persuaded that it supports a conclusion that it was futile for claimant to have sought work in the period preceding claimant's August 13, 2013 "disability date." Consequently, as supplemented, the record establishes that claimant was in the workforce at the time of his disability; *i.e.*, August 13, 2013. Therefore, he is entitled to the requested temporary disability benefits.

In conclusion, the insurer is directed to pay temporary disability benefits effective August 13, 2013, which will continue until such time as such benefits can be lawfully terminated. Claimant's counsel is awarded 25 percent of the increased temporary disability benefits created by this order, not to exceed \$1,500, payable directly to claimant's counsel. OAR 438-015-0010(1).

Accordingly, as modified and supplemented, we republish our September 25, 2014 and October 22, 2014 orders. The parties' 30-day rights of reconsideration and appeal shall begin to run from the date of this order.

IT IS SO ORDERED.

Entered at Salem, Oregon on December 4, 2014