
In the Matter of the Compensation
RICHARD L. ELSEA, Claimant
Own Motion No. 13-0119M
OWN MOTION ORDER REVIEWING CARRIER CLOSURE
Hooton Wold & Okrent LLP, Claimant Attorneys
Liberty Mutual Ins, Carrier

Reviewing Panel: Members Lowell and Lanning.

Claimant requests review of the October 15, 2013 Own Motion Notice of Closure that awarded an additional 26 percent (39 degrees) scheduled permanent partial disability (PPD) for his “post-aggravation rights” new/omitted medical condition (“right knee osteoarthritis/degenerative joint disease”).¹ Claimant seeks permanent total disability (PTD) benefits, or, in the alternative, increased scheduled PPD benefits. Based on the following reasoning, we modify the closure notice.

FINDINGS OF FACTS

Claimant graduated from high school and worked in the sheet metal industry for about 35 years (from 1974 through 2009), as a laborer, helper, journeyman, and eventually in a more supervisory/foreman capacity. (Exs. 14A-3-5, 41-2). From February 1986 to January 1993, he was employed as a journeyman sheet metal worker by the employer-at-injury, where he fabricated duct work, tanks, and structural metal framing. (Exs. 14A-4; 41-2). This work was very heavy and required frequent kneeling and working on his knees on hard surfaces. From approximately 1995 to January 2010 (when he took a medical disability retirement), he worked for different employers in the sheet metal industry in a more supervisory/foreman capacity. (Exs. 41-2, 43-6).

While in high school, claimant felt pain in his left knee while wrestling on one occasion in his junior year. (Exs. 5-1, 11-2, 14-1). He returned to competition the following year without trouble. (Ex. 5-1).

¹ Claimant’s December 17, 1991 claim was accepted as a disabling claim and was first closed on July 2, 1992. Thus, claimant’s aggravation rights expired on July 2, 1997. Therefore, when claimant sought claim reopening in January 2013, the claim was within our Own Motion jurisdiction. ORS 656.278(1). Consistent with our statutory authority, on March 21, 2013, we issued our Own Motion Order authorizing the reopening of the claim and noted that when claimant was medically stationary, the insurer should close the claim pursuant to OAR 438-012-0055. (WCB Case No. 13-0027M). On October 15, 2013, the insurer issued its Notice of Closure.

In 1984, while working for a previous employer, claimant bumped his left knee with a metal bar. (*Id.*) After seeking medical services and missing ten days from work, he returned to his regular work as a sheet metal fabricator. (Ex. 5-1-2). That claim was closed in January 1985, without any permanent disability award. (Ex. 5-2). Claimant continued working with no problems with his left knee. (*Id.*)

In April 1991, claimant sought treatment for right knee pain that had started in October 1990 when he “was doing a lot of crawling and installing.” (Exs. A, B). In May 1991, he underwent an arthroscopic partial right medial meniscectomy to repair a tear of the medial cartilage. (Ex. C). By May 28, 1991, the right knee was stable with no effusion and full range of motion. (Ex. 23-2). At that time, claimant complained of some pain in his left knee, which had been present for years and he attributed to a football injury. (*Id.*) Claimant returned to his regular job as a sheet metal worker.

On December 17, 1991, claimant sustained a compensable right knee injury. (Exs. E, F). On March 26, 1992, he underwent an arthroscopic partial right medial meniscectomy to repair a tear of the medial cartilage. (Ex. J).

In April 1992, the insurer accepted this December 1991 injury for “right knee lateral cartilage tear superimposed over pre-existing mild femoral tibial osteoarthritis (unrelated).” (Ex. K).

A July 2, 1992 Determination Order awarded 5 percent (7.5 degrees) scheduled PPD for loss of use or function of the right leg (knee). (Ex. 1). This award consisted of 5 percent permanent impairment for the March 1992 partial meniscectomy. (Ex. 1-2).

In May 1993, claimant complained of left knee pain that had been present for many years. He thought he hurt his left knee during wrestling, which had been treated conservatively, with intermittent problems since then that had worsened over the last several months. (Ex. 10A-2). In October 1993, claimant underwent a left knee arthroscopic debridement and partial meniscectomy. (Ex. 10A-2). Also in October 1993, claimant filed an occupational disease claim for a degenerative left knee condition. (Ex. 14-2).

In September 1993, as amended in November 1993, the insurer denied claimant’s left knee condition. (Exs. 2, 3). Following litigation, claimant’s left knee condition was found compensable as an occupational disease, and the insurer was assigned responsibility for that condition. (Exs. 5, 11, 12). *Richard L. Elsea,*

47 Van Natta 61, *recons*, 47 Van Natta 262 (1995). The insurer ultimately accepted the claim for left knee medial compartment osteoarthritis, left knee medial compartment arthritis, and left knee proximal osteotomy. (Exs. 14H-11, 17, 41-1). Subsequent Determination Orders awarded a total of 30 percent (45 degrees) scheduled PPD for loss of use or function of the left leg (knee). (Ex. 41-1).

On September 1, 1994, claimant sustained a compensable bilateral knee injury while working for a subsequent employer, which was accepted for a bilateral knee strain and contusion. (Exs. 13, 14-2).

In January 1995, claimant underwent left knee surgery (a proximal tibial osteotomy with internal fixation) for which the insurer was found responsible. (Ex. 14-3-4).

In 1995, claimant participated in a vocational training program for a “cost estimator.” (Exs. 14A, 14B, 14C, 14D). He completed the academic portion of this program, but did not complete the “professional skills training” portion. Instead, he returned to modified work with a subsequent employer as a sheet metal worker, which involved lighter work that was within his physical capacity and included supervisory work. (Ex. 14E).

In February 2009, claimant sought treatment from his then-attending physician, Dr. Austin, for bilateral knee pain, right greater than left. Dr. Austin diagnosed bilateral knee varus degenerative joint disease and provided a right knee steroid injection. (Ex. 14G). The majority of the follow up visits through 2009 and 2010 by Dr. Austin involved the left knee. (Ex. 23-6).

In January 2010, claimant took medical disability retirement. (Exs. 41-2, 42-2).

In July 2010, Dr. Austin provided a left knee supartz injection and discussed the possibility of bilateral knee arthroplasties in the future, preferably waiting until the age of 60. (Ex. 14J-2). At that time, claimant was 55 years old. (Ex. 15).

On September 17, 2010, claimant was awarded Social Security Disability Insurance (SSDI) benefits. (Ex. 14K).

In March 2012, claimant returned to Dr. Austin for treatment of increased right knee pain. (Ex. 16-1). Dr. Austin recommended a right knee steroid injection, noting that claimant might eventually require a right knee arthroplasty. (*Id.*)

In May and August 2012, Dr. Austin performed left knee injections and again noted that claimant would likely eventually require bilateral knee arthroplasties. (Exs. 18-2, 18A-2). In the fall of 2012, claimant underwent the first series of viscosupplementation injections to his right knee. (Ex. 33-1). On October 16, 2012, Dr. Austin stated that the right knee diagnosis was “moderate osteoarthritis/degenerative joint disease.” (Ex. 18B-2).

In January 2013, claimant requested that the insurer accept a “post-aggravation rights” new/omitted medical condition (“osteoarthritis/degenerative joint disease of the right knee”) related to the December 17, 1991 injury claim. (Ex. 21).

On February 11, 2013, Dr. James examined claimant on behalf of the insurer. (Ex. 23).

On March 6, 2013, the insurer accepted the “post-aggravation rights” new/omitted medical condition (“osteoarthritis/degenerative joint disease of the right knee”). (Exs. 24, 25, 26). On March 21, 2013, we authorized the reopening of claimant’s Own Motion claim for this new/omitted medical condition. (Ex. 28). *Richard L. Elsea*, 65 Van Natta 607 (2013).

In a June 18, 2013 addendum report, Dr. James provided the following impairment findings based on his February 2013 examination. (Ex. 33). Ranges of motion (ROM) for claimant’s right knee were 0 degrees (extension) to 100 degrees (flexion); the left knee had a 5 degree flexion contracture with further flexion to 100 degrees. (Ex. 33-2). Claimant’s bilateral quadriceps strength was 5-/5 and bilateral hamstring strength was 5/5. (*Id.*) He had bilateral 1+ valgus laxity at 30 degrees of knee flexion. (Ex. 33-3). He was significantly limited in the repetitive use of his right knee. (*Id.*) There was no sensory loss or shortening of the legs.

In August 2013, claimant changed his attending physician to Dr. Kounine. (Ex. 35). On August 13, 2013, Dr. Kounine examined claimant for bilateral knee pain and diagnosed bilateral knee degenerative joint disease, with medial compartments bone-on-bone. (Ex. 36-1). She discussed treatment options, including viscosupplementation and surgery, focusing on the left knee and agreeing with Dr. Austin that the left total knee replacement surgery should be performed in two stages. (Ex. 35-2). Claimant did not wish to undergo any further intervention at that time, and Dr. Kounine noted that he could follow up with her as needed. (*Id.*)

On October 1, 2013, Dr. Kounine agreed that claimant's right knee condition was medically stationary and concurred with Dr. James's June 2013 addendum report. (Ex. 37).

An October 15, 2013 Notice of Closure awarded an additional 26 percent (39 degrees) scheduled PPD for claimant's "post-aggravation rights" new/omitted medical condition ("right knee osteoarthritis/degenerative joint disease"). (Exs. 38, 39).

On December 10, 2013, Dr. Kounine agreed that claimant's right knee osteoarthritis/degenerative joint disease condition permanently restricted him to lifting or carrying 10 to 20 pounds, the latter occasionally, and restricted him from any kneeling, stooping, climbing, stairs, twisting or crawling, and would require changes of position if he was on his feet for extended periods. (Ex. 41-3). She also agreed that, as of claim closure, claimant could not return to his at-injury job as a journeyman sheet metal worker because that job required very heavy lifting and kneeling. (*Id.*) Finally, Dr. Kounine agreed that, due to the newly accepted condition, claimant could not be on his feet "(his right foot)" for more than two hours in an 8-hour period. (Ex. 41-4).

In a December 16, 2013 report, Mr. Stipe, a vocational consultant, assessed claimant's employability. (Ex. 43). Relying on Dr. Kounine's above-listed physical limitations resulting from the right knee osteoarthritis/degenerative joint disease condition, Mr. Stipe concluded that claimant was unable to perform his past work. (Ex.43-13). In addition, considering claimant's age (almost 59), lack of computer/typing skills, work history, education, aptitudes, interests, vocational testing,² and Dr. Kounine's restrictions limiting a work search to light work with no climbing, stooping, kneeling, crawling, and limitation to only two hours per day on his feet, Mr. Stipe concluded that claimant lacked transferrable skills required to enter skilled, semiskilled, or unskilled employment that existed in substantial numbers in the local economy. (Ex. 43-11-14). Mr. Stipe also concluded that claimant was not able to access a gainful occupation. (Ex. 43-13).

² This vocational testing demonstrated lack of fine finger dexterity, which was rated below the first percentile in comparison with those applying for and being employed in assembly and electrical assemble positions. (Ex. 43-7). Given this, Mr. Stipe concluded that it was vocationally improbable that claimant could obtain employment in small products assembly or electronics assembly. (Ex. 43-7, -11). Mr. Stipe also concluded that claimant's vocational "interest" testing did not indicate much in the way of competencies related to clerical, sales, and business occupations. (Ex. 43-8).

CONCLUSIONS OF LAW AND OPINION

PTD

Claimant's 1991 injury claim was reopened for the processing of a "post-aggravation rights" new/omitted medical condition ("right knee osteoarthritis/degenerative joint disease"). Such claims may qualify for payment of permanent disability compensation, including PTD. ORS 656.278(1)(b); *Goddard v. Liberty Northwest Ins. Corp.*, 193 Or App 238 (2004); *James S. Daly*, 58 Van Natta 2355 (2006); *Sherlee M. Samel*, 56 Van Natta 931, 938 (2004).

Because the claim is in Own Motion status, the Notice of Closure issued under ORS 656.278(6), not ORS 656.206 or ORS 656.268. Nevertheless, where consistent with the provisions of ORS 656.278, the 2005 amendments to ORS 656.206 apply to Own Motion Notices of Closure that issue on or after January 1, 2006. *David C. Drader*, 58 Van Natta 3093, 3098 (2006). Thus, because this Own Motion Notice of Closure issued after January 1, 2006, the 2005 amendments to ORS 656.206 apply.

ORS 656.206(1)(d) (2005) provides that PTD "means, notwithstanding ORS 656.225, the loss, including preexisting disability, of use or function of any portion of the body which permanently incapacitates the worker from regularly performing work at a gainful and suitable occupation." "Regularly performing work" means the ability of the worker to discharge the essential functions of the job" and "[s]uitable occupation" means one that the worker has the ability and the training or experience to perform, or an occupation that the worker is able to perform after rehabilitation." ORS 656.206(1)(e), (f) (2005).

In *Daly*, we awarded the claimant PTD for a "post-aggravation rights" new/omitted medical condition. 58 Van Natta at 2374. Our analysis of ORS 656.206, in conjunction with ORS 656.278, resulted in the following conclusions. First, disability for a previously accepted condition³ is considered as it existed at the last claim closure that preceded the expiration of claimant's 5-year aggravation

³ Here, claimant's previously accepted condition regarding the "post-aggravation rights" new/omitted medical condition claim ("right knee osteoarthritis/degenerative joint disease") currently being rated was the "right knee lateral cartilage tear superimposed over pre-existing mild femoral tibial osteoarthritis (unrelated)," which was last closed in July 1992 (before the expiration of his 5-year aggravation rights on July 2, 1997). (Exs. K, 1).

rights.⁴ *Daly*, 58 Van Natta at 2361. Second, any disability that predates the initial compensable injury is also considered. *Id.* at 2364-65. Third, when such disabilities exist, they are considered with any disability from the “post-aggravation rights” new/omitted medical condition to determine whether the claimant has established entitlement to PTD. *Id.* at 2371.

Considering those factors, claimant may establish entitlement to PTD by proving that: (1) he is completely physically disabled and therefore precluded from gainful employment; or (2) his physical impairment, combined with a number of social and vocational factors, effectively prevents gainful employment under the “odd lot” doctrine. *Id.* at 2368; *see also Clark v. Boise Cascade*, 72 Or App 397, 399 (1985); *Nancy J. Ferguson*, 64 Van Natta 2315 (2012); *Drader*, 58 Van Natta at 3099.

Finally, ORS 656.206(3) (2005) provides:

“The worker has the burden of proving permanent total disability status and must establish that the worker is willing to seek regular gainful employment and that the worker has made reasonable efforts to obtain such employment.”

Under the statute, claimant must prove that, “but for the compensable injury, [he] (1) is or would be willing to seek gainful employment and (2) has or would have made reasonable efforts to obtain such employment” unless seeking such work would have been futile. *SAIF v. Stephen*, 308 Or 41, 47-48 (1989).⁵

After conducting our review, we find that the record does not persuasively establish claimant’s entitlement to PTD. We reason as follows.

⁴ We reasoned that, under this method, the PTD evaluation would include consideration of permanent disability from the accepted conditions occurring before the expiration of aggravation rights, but would not include consideration of permanent disability from any “worsened condition” after the expiration of aggravation rights, which would be contrary to the statutory scheme and the rationale expressed in *Goddard*, *Samel*, and *Jimmy O. Dougan*, 54 Van Natta 1213, *recons.*, 54 Van Natta 1552 (2002), *aff’d Dougan v. SAIF*, 193 Or App 767 (2004), *vacated*, 339 Or 1 (2005). *Daly*, 58 Van Natta at 2362.

⁵ The statutory language in ORS 656.206(3) that was interpreted by *Stephen*, remains unchanged, as quoted above.

First, the record does not establish that claimant is permanently physically disabled. Therefore, claimant must establish that his physical impairment, combined with a number of social and vocational factors, effectively prevents gainful employment under the “odd lot” doctrine. *Daly*, 58 Van Natta at 2368; *see also Clark*, 72 Or App at 399.

Here, Mr. Stipe provides the analysis of these social and vocational factors. However, as explained below, claimant has not established the “work force” element. *See Stephen*, 308 Or 47-48. Therefore, we need not conclusively determine whether Mr. Stipe’s opinion is sufficient to establish that claimant’s physical impairment that could be considered, combined with a number of social and vocational factors, effectively prevents gainful employment under the “odd lot” doctrine.⁶

In January 2010, claimant withdrew from the work force when he took medical disability retirement. (Exs. 41-2, 42-2). This action occurred three years before his January 2013 request for acceptance of the “post-aggravation rights” new/omitted medical condition (“osteoarthritis/degenerative joint disease of the right knee”). (Ex. 21).

We acknowledge that claimant’s withdrawal from the work force does not prevent him from proving that he subsequently reentered the work force. *See Stephen*, 308 Or at 47; *Wausau Ins. Co. v. Morris*, 130 Or App 270, 273 (1990) (a claimant’s withdrawal from the work force does not irrevocably commit him to retirement/withdrawal for workers’ compensation purposes); *George Sweet*, 64 Van Natta 1022, 1027 (2012). Nevertheless, this record does not persuasively establish that claimant subsequently reentered the work force following his January 2010 retirement.

Here, claimant submitted a December 11, 2013 affidavit, attesting, in part, that he was willing to seek regular gainful employment and had made reasonable efforts to find such employment, asserting that he had applied for “a job through

⁶ Because claimant’s *left* knee condition was not disabling before the initial compensable injury to his right knee, any *left* knee disability may not be considered. *Daly*, 58 Van Natta at 2361. However, in reaching his conclusion regarding claimant’s employability, Mr. Stipe noted that claimant “had abundant problems with his *knees*.” (Ex. 43-13, emphasis added). Thus, it is not clear that Mr. Stipe focused solely on the right knee condition factors that could be considered in reaching his “employability” conclusion. Nevertheless, as explained above, the key issue under the particular facts of this case is whether claimant established the “work force” element. Because that element is not established on this record, we need not conclusively determine the persuasiveness of Mr. Stipe’s opinion.

the union for sheet metal workers and for other jobs” but had not secured employment. (Ex. 42-2). Claimant also asserted that trying to obtain suitable and gainful employment was futile due to his right knee condition, restrictions, age, education, and adaptability to nonphysical labor. (*Id.*)

The record lacks corroboration regarding claimant’s assertion that he has made reasonable efforts to obtain employment. In this regard, there is no information regarding the number, or dates, of such applications or the names of the potential employers for these “other jobs.”⁷ Nor is there any corroboration regarding any of these matters; *e.g.*, copies of job applications/responses.

Moreover, even if claimant can establish that a work search would be futile, he must nevertheless prove that, but for the compensable injury, he is willing to work. *Stephen*, 308 Or at 48; *Harry L. Lyda*, 52 Van Natta 21 (2000). In other words, a finding of futility alone is not sufficient to support an award of PTD benefits because a finding that claimant is willing to work is a prerequisite to entitlement to such benefits. *Id.*; ORS 656.206(3) (2005).

As noted above, claimant withdrew from the work force several years ago. Specifically, when he requested acceptance of the “post-aggravation rights” new/omitted medical condition (“osteoarthritis/degenerative joint disease of the right knee”), he had already been out of the work force three years (he had been out of the work force over two years when he began receiving SSDI benefits). (Exs. 21, 41-2, 42-2). Under these particular circumstances, claimant’s affidavit, without corroboration, does not establish that he reentered the work force or was otherwise willing to work.

Accordingly, the record does not persuasively establish that the requirements under ORS 656.206(3) (2005) have been satisfied. Consequently, claimant is not entitled to PTD benefits.⁸

Scheduled PPD

Alternatively, claimant contends that he is entitled to additional scheduled PPD. Based on the following reasoning, we agree.

⁷ Because the dates of these job search efforts have not been documented, it is unclear when these efforts occurred.

⁸ We need not conclusively address the remaining elements of entitlement to PTD benefits.

The PPD limitation set forth in ORS 656.278(2)(d) applies where there is (1) “additional impairment” to (2) “an injured body part” that has (3) “previously been the basis of a [PPD] award.” *Cory L. Nielsen*, 55 Van Natta 3199, 3206 (2003). If those conditions are satisfied, the Director’s standards for rating new and omitted medical conditions related to non-Own Motion claims apply to rate “post-aggravation rights” new or omitted medical condition claims. Under such circumstances, we redetermine the claimant’s permanent disability pursuant to those standards before application of the limitation in ORS 656.278(2)(d). *Jeffrey L. Heintz*, 59 Van Natta 419 (2007); *Nielsen*, 55 Van Natta at 3207-08.

Here, among other impairment findings, Dr. Kounine concurred with Dr. James’s findings of decreased ROM, loss of strength, instability, and significant limitation in the repetitive use of the right knee. Moreover, claimant’s “post-aggravation rights” new/omitted medical condition (“right knee osteoarthritis/degenerative joint disease”) involved the same “injured body part” (right leg (knee)) that was the basis of his previous 5 percent scheduled PPD award.

Therefore, the limitation in ORS 656.278(2)(d) applies to claimant’s scheduled PPD. However, before application of the statutory limitation, we redetermine claimant’s scheduled PPD pursuant to the Director’s standards. *See* OAR 436-035-0007(3); *Nielsen*, 55 Van Natta at 3207.

Claimant’s claim was closed by an October 2013 Own Motion Notice of Closure. Thus, the applicable standards are found in WCD Admin. Order 12-061 (eff. January 1, 2013). *See* OAR 436-035-0003(1).

For the purpose of rating claimant’s permanent impairment, only the opinions of his attending physician at the time of claim closure, or any findings with which he or she concurred, and a medical arbiter’s findings may be considered. *See* ORS 656.245(2)(b)(C); ORS 656.268(7); *Tektronix, Inc. v. Watson*, 132 Or App 483 (1995); *Koitzsch v. Liberty Northwest Ins. Corp.*, 125 Or App 666 (1994). Only findings of impairment that are permanent and caused by the accepted compensable condition may be used to rate impairment. OAR 436-035-0007(1); *Khrul v. Foremans Cleaners*, 194 Or App 125, 130 (2004).

Here, no medical arbiter examination was performed. Consequently, to rate permanent impairment, we rely on the reports from Dr. Kounine, claimant’s attending physician, and any impairment findings with which she concurred. *See Jennifer L. Williams*, 63 Van Natta 638 (2011).

The parties do not dispute and we find that claimant is entitled to the following right knee impairment values based on Dr. Kounine's concurrence with Dr. James's impairment findings: 18 percent for ROM; 2 percent for loss of quadriceps strength; 5 percent for instability, and 5 percent for chronic condition impairment. (Exs. 33, 37). OAR 436-035-0011(2)(a), (3)(b), (7)(a); OAR 436-035-0019(1)(b); OAR 436-035-0220(1), (2); OAR 436-035-00230(3), (9). Claimant is also entitled to 5 percent impairment for the March 1992 partial meniscectomy. OAR 436-035-0230(5)(d).

Dr. Kounine also found that claimant cannot be on his feet for more than two hours in an eight hour period. (Ex. 41-4). Therefore, he is entitled to a 15 percent impairment value for this right leg "walking/standing" limitation. OAR 436-035-0230(14).

There are no other ratable permanent impairment findings. Therefore, we combine claimant's right leg (knee) impairment values as follows: 18 percent (ROM) combined with 15 percent (walk/stand limitation) equals 30 percent; 30 percent combined with 5 percent (instability) equals 34 percent; 34 percent combined with 5 percent (chronic condition) equals 37 percent; 37 percent combined with 5 percent (surgery) equals 40 percent; 40 percent combined with 2 percent (strength loss) results in a total of 41 percent (61.5 degrees) scheduled PPD for the loss of use or function of the right leg (knee). OAR 436-035-0011(6); OAR 436-035-0019(2).

As discussed above, the limitation in ORS 656.278(2)(d) applies. Therefore, claimant is entitled to additional scheduled PPD only to the extent that the PPD rating exceeds that rated by prior awards. ORS 656.278(2)(d); *Nielsen*, 55 Van Natta at 3208. In this instance, claimant's prior 5 percent (7.5 degrees) scheduled PPD award is less than his current 41 percent (61.5 degrees) scheduled PPD, which leaves a remainder of 36 percent (54 degrees). The Notice of Closure awarded 26 percent (39 degrees) additional scheduled PPD. Accordingly, we modify the Notice of Closure to award an additional 10 percent (15 degrees) scheduled PPD for loss of use or function of the right leg (knee).⁹

Because our decision results in increased scheduled PPD, claimant's counsel is awarded an "out-of-compensation" attorney fee equal to 25 percent of the increased scheduled PPD compensation created by this order (the 10 percent

⁹ Claimant's total award to date is 41 percent (61.5 degrees) scheduled PPD for the loss of use or function of the right leg (knee).

(15 degrees) scheduled PPD award granted by this order), not to exceed \$4,600, payable directly to claimant's counsel. ORS 656.386(4); OAR 438-015-0040(1); OAR 438-015-0080(3).

IT IS SO ORDERED.

Entered at Salem, Oregon on March 18, 2014