
In the Matter of the Compensation of
ANTONIO M. GIRON-MENDOZA, Claimant
WCB Case Nos. 13-00417, 12-03078, 12-00158
ORDER ON REVIEW
Unrepresented Claimant
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Johnson and Weddell.

Claimant, *pro se*, requests review of Administrative Law Judge (ALJ) Brown's order that: (1) declined to reopen the record to allow claimant to demonstrate his left wrist limitations; (2) upheld the SAIF Corporation's denials of claimant's new/omitted medical conditions claims for various right shoulder and left wrist conditions; (3) did not award a penalty for allegedly unreasonable claim processing; and (4) affirmed an Order on Reconsideration that awarded 9 percent whole person permanent impairment for claimant's right wrist and left index finger conditions.¹ On review, the issues are the ALJ's procedural ruling, compensability, and extent of permanent disability (impairment).

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

The ALJ declined claimant's request to reopen the record for a deposition of Dr. Button and to demonstrate his injured hand movements. Claimant contends that the ALJ's decision was incorrect. We disagree.

Under OAR 438-007-0025, the ALJ may reopen the record before a request for review is filed or, if none is filed, before the time for requesting review expires. *See Jeffrey C. Bach*, 61 Van Natta 477 (2009). An ALJ is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, and may conduct a hearing in any manner that will achieve substantial justice. ORS 656.283(6). The ALJ's decision regarding the reopening of the record is discretionary, and we review such a decision for an abuse of discretion. *Bach*, 61 Van Natta at 481.

¹ Because claimant is unrepresented, he may wish to consult the Workers' Compensation Ombudsman. He may contact the Workers' Compensation Ombudsman, free of charge, at 1-800-927-1271, or write to:

WORKERS' COMPENSATION OMBUDSMAN
DEPT OF CONSUMER & BUSINESS SERVICES
PO BOX 14480
SALEM, OR 97309-0405

Here, in declining to reopen the record, the ALJ reasoned that claimant had not explained why he could not have previously requested to depose Dr. Button, and that he had agreed to written arguments instead of a hearing. Finally, the ALJ noted that an “in-person” demonstration would not have changed the outcome of the case. After conducting our review of the record (including claimant’s contentions on appeal), we find no abuse of discretion in the ALJ’s decision not to reopen the record.

Claimant also appears to raise a discovery violation in his appellant’s brief. It is unclear, however, whether this issue was raised at the hearing level and the ALJ’s order did not address such an issue. In any event, since the denials are being upheld and the reconsideration order is being affirmed, there is no compensation due on which to base a penalty.

In addition, claimant refers to other conditions, such as his ribs. Because they were not among the conditions denied by SAIF, they are not an issue in this proceeding.² We, therefore, decline to address their compensability.

Claimant also expresses frustration with Dr. Teed, his attending physician. Yet, even if we did not consider his opinion, the remaining medical evidence does not establish the compensability of the denied conditions or result in an increased permanent disability award.

Claimant further contests the ALJ’s conclusion that he did not prove the existence of the claimed right labral detachment. *Maureen Y. Graves*, 57 Van Natta 2380, 2381 (2005) (persuasive proof of the existence of the condition is a fact necessary to establish the compensability of a new or omitted condition). Even if the claimed condition exists, however, this record does not persuasively establish that the work incident was a material contributing cause of the disability or need for treatment for this condition. Thus, the claimed condition is not compensable.

Finally, to the extent that claimant has raised a penalty issue, we would decline to assess a penalty. Even if SAIF’s claim processing was unreasonable, there are no amounts “then due” on which to base a penalty. *See* ORS 656.262(11)(a).

² Claimant, however, may initiate a new/omitted medical condition claim at any time. ORS 656.267.

ORDER

The ALJ's order dated July 18, 2014, as republished and supplemented on September 8, 2014 and October 6, 2014, is affirmed.

Entered at Salem, Oregon on March 20, 2015