
In the Matter of the Compensation of
JAMES E. MANNING, Claimant
Own Motion Nos. 16-00010OM, 15-00068OM
INTERIM OWN MOTION ORDER POSTPONING ACTION ON REVIEW OF
CARRIER CLOSURE
Welch Bruun & Green, Claimant Attorneys
Law Offices of Kathryn R Morton, Defense Attorneys

Reviewing Panel: Members Lanning and Johnson.

Claimant requests review of January 22, 2016 and September 29, 2015 Notices of Closure that awarded an additional 10 percent (19.2 degrees) scheduled permanent partial disability (PPD) for his “post-aggravation rights” new/omitted medical conditions (left elbow post traumatic arthritis and left elbow cubital tunnel syndrome). On review, claimant seeks a permanent disability award, as well as the appointment of a medical arbiter.

FINDINGS OF FACT

On December 8, 1992, claimant sustained a compensable left arm injury.

On January 23, 2014, the insurer voluntarily reopened claimant’s Own Motion claim for a “worsened condition” regarding a previously accepted condition (left elbow fracture). (Ex. 38).

On August 8, 2014, the insurer accepted “post-aggravation rights” new/omitted medical conditions (left elbow post traumatic arthritis and left elbow cubital tunnel syndrome). (Ex. 46).

On September 29, 2015, the insurer issued an Own Motion Notice of Closure that closed the reopened “worsened condition” claim and purported to close a “post-aggravation rights” new/omitted medical condition claim for the aforementioned conditions. (Ex. 50). The Notice of Closure also purported to award an additional 10 percent scheduled PPD.

Claimant filed a request for Board review of the September 2015 Notice of Closure, seeking the appointment of a medical arbiter and an increased permanent disability award. In response, the parties were advised that there was no record that the Own Motion claim for the new/omitted medical condition had been reopened.

On January 14, 2016, the insurer voluntarily reopened claimant's Own Motion claim for the aforementioned new/omitted medical conditions. (Ex. 54).

On January 22, 2016, an Own Motion Notice of Closure did not award permanent disability for the aforementioned "post-aggravation rights" new/omitted medical conditions beyond that granted by the September 2015 Notice of Closure. (Ex. 55).

Claimant requested review of the January 2016 Notice of Closure. He seeks the appointment of a medical arbiter, as well as an increased permanent disability award.

CONCLUSIONS OF LAW AND OPINION

Although there is no dispute that the reopened "worsened condition" claim was properly closed by the September 29, 2015 Notice of Closure, such claims are not statutorily entitled to the relief that claimant seeks; *i.e.*, permanent disability benefits and appointment of a medical arbiter. *See 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); *Timothy R. Marino*, 58 Van Natta 766 (2006); *Von D. Bailey*, 59 Van Natta 847, 849 (2007).

Nevertheless, because claimant also requests review of the January 22, 2016 Own Motion Notice of Closure based on his disagreement with the impairment findings used to rate his disability and requests the appointment of a medical arbiter, 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. *See John S. Ross*, 56 Van Natta 3369 (2004); *Edward A. Miranda*, 55 Van Natta 784 (2003).

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 (left elbow post traumatic arthritis and left elbow cubital tunnel syndrome), the only conditions for which claimant is presently entitled to a rating of permanent disability benefits under ORS 656.278(1)(b) and ORS 656.278(2)(d).¹

¹ The 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 to address the effect, if any, the arbiter's report has on claimant's request for review of the closure notices. After completion of that schedule, we will proceed with our review.

IT IS SO ORDERED.

Entered at Salem, Oregon on April 6, 2016