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In the Matter of the Compensation of  
**CHRISTOPHER M. NAYLOR, Claimant**  
Own Motion No. 16-00026OM  
OWN MOTION ORDER  
Unrepresented Claimant  
Intermountain Claims Inc, Carrier

Reviewing Panel: Members Weddell and Curey.

The insurer has submitted its recommendation against the reopening of claimant's Own Motion claim for a "worsening" of his previously accepted conditions (left knee sprain and left knee medial meniscus tear). ORS 656.278(1)(a). The insurer opposes reopening, contending that claimant's compensable condition does not require any medical treatment that qualifies for claim reopening. Based on the following reasoning, we deny reopening of the "worsened condition" claim.

FINDINGS OF FACT

On August 7, 2008, claimant sustained a compensable left knee injury, which the insurer accepted for left knee sprain and left knee medial meniscus tear. The claim was closed on February 20, 2009, and claimant's aggravation rights expired on February 20, 2014.

On April 5, 2016, claimant sought treatment from Dr. Black for increased left knee pain. (Ex. 5). Dr. Black noted that claimant was "status post high tibial osteotomy." (Ex. 5-3). He ordered an MRI and took claimant off work "until further notice." (Ex. 5-5).

On April 8, 2016, claimant underwent an MRI. (Ex. 3). On April 13, 2016, Dr. Black reviewed the MRI and injected claimant's left knee with a combination of a short acting medication and a long acting steroid. (Ex. 2-4). He noted that claimant was not medically stationary and was to continue with the same work restrictions. He also expressed concern about where "all this is going, the endpoint may be an arthroplasty." (*Id.*) However, Dr. Black decided to wait to see how claimant did after the injection.

On April 28, 2016, Dr. Black submitted an 827 form that reported an "aggravation." (Ex. 4). On May 11, 2016, he released claimant to modified (light duty) work. (Ex. 1).

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CONCLUSIONS OF LAW AND OPINION

The issue is whether claimant's Own Motion claim qualifies for reopening for a worsening of his previously accepted conditions under ORS 656.278(1)(a). There are three requirements for the reopening of such a claim. First, the worsening must result in the partial or total inability of the worker to work. Second, the worsening must require hospitalization, inpatient or outpatient surgery, or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the worker to return to work. Third, the worker must be in the work force at the time of disability as defined under the criteria in *Dawkins v. Pacific Motor Trucking*, 308 Or 254 (1989); *James J. Kemp*, 54 Van Natta 491 (2002).

The insurer concedes that claimant was in the work force and his worsened condition resulted in a partial or total inability to work. However, the insurer contends that the "worsened condition" did not require any requisite medical treatment. Based on the following reasoning, we agree.

The three qualifying medical treatments listed in ORS 656.278(1)(a) are defined as follows: (1) "Surgery" is an invasive procedure undertaken for a curative purpose that is likely to temporarily disable the worker; and (2) "hospitalization" is a nondiagnostic procedure that requires an overnight stay in a hospital or similar facility. *Larry D. Little*, 54 Van Natta 2536, 2542 (2002). The third type of qualifying treatment requires establishment of three elements: (1) curative treatment (treatment that relates to or is used in the cure of diseases, tends to heal, restore to health, or to bring about recovery); (2) prescribed (directed or ordered by a doctor) in lieu of (in the place of or instead of) hospitalization; and (3) is necessary (required or essential) to enable (render able or make possible) the injured worker to return to work. *Little*, 54 Van Natta at 2546. If any of these three qualifying medical treatments is satisfied, a "worsening condition" claim meets the "medical treatment" requirement for reopening in Own Motion. *Little*, 54 Van Natta at 2540-41.

After conducting our review, we find that the record does not establish that claimant's accepted conditions (left knee sprain and left knee medial meniscus tear) required hospitalization, surgery or other curative treatment that was prescribed in lieu of (instead of or in place of) hospitalization that was necessary to enable him to return to work. ORS 656.278(1)(a); *Roger D. Houser*, 61 Van Natta 2383 (2009); *Little*, 54 Van Natta at 2546. In this regard, no physician recommended surgery or hospitalization. Although Dr. Black might have considered the possibility of surgery when he expressed his concern about

where “all this is going, the endpoint may be an arthroplasty,” he ultimately did not recommend surgery. (Ex. 2-4). *See Vicki M. Weaver*, 56 Van Natta 2862 (2004) (although *recommendation* for requisite medical treatment is sufficient to qualify for claim reopening under ORS 656.278(1)(a), *possibility* of such treatment is not).

Furthermore, the medical record does not support claimant’s contention that the injection itself constituted “surgery.” In this regard, claimant states that it “is long established that injections, including those of the shoulder, knee joint or spine, are denoted as surgical procedures.” Claimant offers no support for this statement and we find none. To the contrary, we have found that the resolution of the issue of the “medical treatment” requirement under ORS 656.278(1)(a) is made on a “case-by-case” basis considering the particular record before us. *See Oscar Cano-Sanchez*, 68 Van Natta 303, 305-06 (2016) (explaining that resolution of issue of medical treatment requirement under ORS 656.278(1)(a) is made on “case-by-case” basis considering particular record); *see also Todd R. Ferguson*, 62 Van Natta 933 (2010) (based on particular record, epidural steroid injection did not constitute hospitalization, surgery, or other curative treatment prescribed in lieu of hospitalization that was necessary to enable the worker to return to work); *Dale T. Dreyer*, 61 Van Natta 2076 (2009) (same); *Benny E. McAllister*, 60 Van Natta 2322 (2008) (same); *Robert R. Fisher*, 60 Van Natta 1370 (2008) (same); *cf. Cano-Sanchez*, 68 Van Natta at 306 (based on particular record, epidural steroid injection constituted other curative treatment prescribed in lieu of hospitalization that was necessary to enable the worker to return to work); *Peter B. Wallen*, 55 Van Natta 1905 (2003) (same). Moreover, that determination is based on whether the particular record satisfies the aforementioned definitions of hospitalization, surgery, or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the worker to return to work.

Here, the record does not establish that the injection satisfies the above definition of “surgery.” In this regard, even if the injection qualified as an invasive procedure undertaken for a curative purpose, the record does not establish that it was likely to temporarily disable claimant.<sup>1</sup> *See Little*, 54 Van Natta at 2542 (defining “surgery” as including the likelihood of temporarily disabling the claimant).

Finally, the record does not establish that there was any medical treatment prescribed for the aforementioned accepted condition that constitutes “other curative treatment prescribed in lieu of hospitalization that is necessary to enable

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<sup>1</sup> Thus, based on this record, the injection does not constitute “surgery.” *See* ORS 656.278(1)(a); *Cano-Sanchez*, 68 Van Natta at 305-06.

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the injured worker to return to work.” Specifically, even if the injection was curative and necessary to enable claimant to return to work, there is no evidence that the injection was prescribed in lieu of hospitalization. *See* ORS 656.278(1)(a); *Stephen Jackson*, 55 Van Natta 2421, 2422 (2003) (although treatment (prescription medication) was arguably curative and necessary to enable the claimant to return to work, there was no evidence that the treatment was prescribed in lieu of hospitalization); *Mark R. Gescher*, 55 Van Natta 1956 (2003) (same).

Consequently, based on the aforementioned reasoning, this Own Motion “worsened condition” claim does not satisfy the requisite “medical treatment” criteria required under ORS 656.278(1)(a). Accordingly, the request for claim reopening is denied. Claimant’s entitlement to medical expenses pursuant to ORS 656.245 regarding his accepted condition is not affected by this order.

**IT IS SO ORDERED.**

Entered at Salem, Oregon on August 2, 2016