
In the Matter of the Compensation of
JEFFREY L. HEINTZ, Claimant
Own Motion No. 15-00067OM
OWN MOTION ORDER REVIEWING CARRIER CLOSURE
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Reviewing Panel: Members Curey and Lanning.

Claimant requests review of the October 9, 2015 Own Motion Notice of Closure that: (1) found his condition medically stationary as of September 10, 2015; (2) awarded temporary disability from October 23, 2014 through July 9, 2015; and (3) did not award permanent disability for his “worsened condition.”¹ Based on the following reasoning, we affirm the Notice of Closure.

FINDINGS OF FACT

On April 2, 1984, claimant sustained a compensable left knee injury. The SAIF Corporation initially accepted “left knee.” (Exs. 8, 14). A May 1, 1985 Determination Order awarded 25 percent (37.5 degrees) scheduled permanent partial disability (PPD) for the loss of use or function of the left leg (knee). (Exs. 1-2, 64-1).

In April 2006, SAIF accepted and voluntarily reopened claimant’s Own Motion claim for a “post-aggravation rights” new/omitted medical condition (left knee tricompartmental degenerative joint disease). (Ex. 13-2). An August 9, 2006 Notice of Closure awarded an additional 4 percent (6 degrees), for a total award of 29 percent (43.5 degrees), scheduled PPD for the loss of use or function of the left leg (knee) for that “post-aggravation rights” new/omitted medical condition. We affirmed the closure notice. *Jeffrey L. Heintz*, 59 Van Natta 419 (2007).

On November 15, 2013, SAIF accepted and voluntarily reopened claimant’s Own Motion claim for additional “post-aggravation rights” new/omitted medical conditions (left knee medial and lateral meniscus tears, left knee ACL tear, and left knee arthritis). (Ex. 14).

¹ Claimant’s April 2, 1984 claim was accepted as a disabling claim and was first closed on May 1, 1985. Thus, claimant’s aggravation rights expired on May 1, 1990. Therefore, when claimant sought claim reopening in September 2014, the claim was within our Own Motion jurisdiction. ORS 656.278(1). On November 5, 2014, the SAIF Corporation voluntarily reopened claimant’s Own Motion claim for a “worsened condition.” ORS 656.278(1)(a), (5). On October 9, 2015, SAIF issued its Notice of Closure.

In February 2014 and May 2014, Dr. Ballard, claimant's attending physician, recommended a left total knee arthroplasty (TKA). (Exs. 16, 33). Claimant chose not to undergo surgery at that time. In August 2014, Dr. Ballard found claimant's left knee condition medically stationary, noting that he would be pursuing a left TKA "at some point in about 6 months." (Ex. 43).

A September 2, 2014 Notice of Closure did not award any additional PPD for those reopened "post-aggravation rights" new/omitted medical conditions. On June 30, 2015, we found that the claim was not prematurely closed and modified the closure notice to award an additional 1 percent (1.5 degrees) scheduled PPD, for a total award of 30 percent (45 degrees) scheduled PPD for loss of use or function of the left leg (knee). *Jeffrey L. Heintz*, 67 Van Natta 1164 (2015).

On September 29, 2014, claimant treated with Dr. Shin, an urgent care doctor, who opined that his left knee condition was not medically stationary and recommended a left TKA. (Exs. 47, 48). Dr. Shin also released claimant from work. (Ex. 48). That day, claimant filed an 827 form reporting a worsening and requesting acceptance of left knee arthritis as a "post-aggravation rights" new/omitted medical condition.² (Ex. 46).

On October 23, 2014, claimant treated with Mr. Garland, Dr. Ballard's physician's assistant, who found that his left knee condition was not medically stationary and recommended a left TKA. (Ex. 50-1). Mr. Garland noted that claimant was now ready to seek a TKA and released him from work until further notice. (Exs. 50-1, 51). That day, claimant filed another 827 form reporting a worsening. (Ex. 49).

On November 5, 2014, SAIF reopened claimant's Own Motion claim for a worsening of his "left knee arthritis." (Ex. 55-1).

On January 27, 2015, Dr. Ballard performed a left TKA. (Ex. 69).

On April 30, 2015, claimant returned to see Dr. Ballard for his 3 month follow-up. Dr. Ballard stated that the "[e]stimated time to medically stationary status is difficult to predict at this time." (Ex. 86-1). He released claimant to work with light duty restrictions. (*Id.*) Claimant did not return to modified work. (Exs. 88, 91).

² On November 5, 2014, SAIF denied claimant's claim for left knee arthritis because the same condition had been previously accepted. (Ex. 53). Claimant did not challenge that denial.

On July 9, 2015, Dr. Ballard found that claimant's left knee condition was not medically stationary. (Ex. 95-1). He released claimant to full duty, without restrictions. (*Id.*) On July 20, 2015, claimant returned to regular work. (Ex. 97).

On September 10, 2015, Dr. Ballard stated, “[claimant has a] stable well-functioning left total knee replacement” and directed him to “[f]ollow up every 3 years.” (Ex. 100-1).

An October 9, 2015 Own Motion Notice of Closure: (1) found claimant's conditions medically stationary as of September 10, 2015; (2) awarded temporary total disability (TTD) compensation from October 23, 2014 through July 9, 2015; and (3) did not award additional scheduled PPD for the “worsened” left knee condition. (Ex. 101-3, -6).

Claimant requested review of the Notice of Closure, contending that his claim was prematurely closed. Alternatively, claimant seeks additional temporary disability benefits, additional permanent benefits, and the appointment of a medical arbiter.

CONCLUSIONS OF LAW AND OPINION

Premature Closure

A claim may not be closed unless claimant's condition is medically stationary. *See* OAR 438-012-0055(1). “Medically stationary” means that no further material improvement would reasonably be expected from medical treatment or the passage of time. ORS 656.005(7).

Under ORS 656.278(6) and OAR 438-012-0055, the propriety of the closure turns on whether claimant's condition was medically stationary at the time of the October 9, 2015 Notice of Closure, considering claimant's condition at that time. *See* ORS 656.268(1); *Sullivan v. Argonaut Ins. Co.*, 73 Or App 694 (1985); *Alvarez v. GAB Business Services*, 72 Or App 524 (1985). The issue of claimant's medically stationary status is primarily a medical question to be decided based on competent medical evidence, but not limited to the opinion of the attending physician. *Harmon v. SAIF*, 54 Or App 121, 125 (1981); *Michael J. Oliver*, 63 Van Natta 728, 730 (2011).

Claimant contends that SAIF's claim closure was premature because his compensable condition was not medically stationary when the claim was closed. Thus, he must establish that his compensable condition was not medically stationary on October 9, 2015. *See Rogers v. Tri-Met*, 75 Or App 470 (1985); *Francisco Villagrana*, 58 Van Natta 1860, 1864 (2006).

Here, on September 10, 2015, Dr. Ballard, claimant's attending physician, opined that "[claimant has a] stable well-functioning left total knee replacement" and directed him to "[f]ollow up every 3 years." (Ex. 100-1). Based on Dr. Ballard's uncontroverted opinion, we find that claimant's left knee condition was medically stationary on September 10, 2015.

Under these circumstances, we find that claimant's accepted "worsened condition" (left knee arthritis) was medically stationary on the date his claim was closed. Therefore, his claim was not prematurely closed.

Temporary Disability

The October 9, 2015 Notice of Closure awarded TTD compensation from October 23, 2014 through July 9, 2015. (Ex. 101-3, -6). On Board review, claimant seeks additional temporary disability. Based on the following reasoning, we find that claimant is not entitled to additional temporary disability.

Pursuant to ORS 656.278(1)(a), "the payment of temporary disability compensation in accordance with ORS 656.210, 656.212(2) and 656.262(4) may be provided from the time the attending physician authorizes temporary disability compensation for the hospitalization, surgery or other curative treatment until the worker's condition becomes medically stationary [.]” *See* OAR 438-012-0035(1). Additionally, temporary disability compensation is payable until termination of such benefits is authorized under ORS 656.268(4)(a) through (d). *See* OAR 438-012-0035(5)(d); *Lawrence P. Mitchell*, 58 Van Natta 1420 (2006).

ORS 656.268(4)(b) provides that a carrier may terminate temporary disability compensation when "[t]he attending physician * * * advises the worker and documents in writing that the worker is released to return to regular employment.” *See* OAR 438-012-0035(5)(d).

Here, Dr. Ballard's release to regular work as of July 9, 2015 is unequivocal. (Ex. 95-1). Claimant returned to regular work on July 20, 2015. (Ex. 97). On September 10, 2015, Dr. Ballard found that claimant's left knee condition

was medically stationary. (Ex. 100-1). There is no medical evidence indicating that claimant was disabled after he was released to regular work on July 9, 2015 or before his condition was found medically stationary on September 10, 2015.

Under such circumstances, the record does not support claimant's entitlement to additional temporary disability compensation. *See Donald W. Zerkel*, 60 Van Natta 1354 (2008); *Mitchell*, 58 Van Natta at 1421. Accordingly, we affirm the Notice of Closure's TTD award.

Permanent Disability

Claimant is not entitled to permanent disability compensation for his "worsened condition." We reason as follows.

When a claim has been reopened pursuant to our Own Motion authority for a "worsened condition" under ORS 656.278(1)(a), the subsequent closure of that claim pertains only to the reopened "worsened condition" claim. *Dennis D. Kessel*, 55 Van Natta 3651 (2003); *Clayton L. Sutherland*, 55 Van Natta 2694 (2003); *Ginney E. Etherton*, 55 Van Natta 2216 (2003).

Here, the claim was reopened for a "worsened condition" that was in Own Motion status. *See* ORS 656.278(1)(a). Accordingly, SAIF's October 9, 2015 Notice of Closure pertained only to the claim for a "worsened condition." *See Etherton*, 55 Van Natta at 2217.

In conclusion, because the claim was reopened for a worsened condition that was in Own Motion status, claimant is not statutorily entitled to a permanent disability award.³ *See Goddard v. Liberty Northwest Ins. Corp.*, 193 Or App 238 (2004); *Jose C. Moreno*, 63 Van Natta 2242 (2011); *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).

Accordingly, we affirm the October 9, 2015 Notice of Closure.

IT IS SO ORDERED.

Entered at Salem, Oregon on January 7, 2016

³ Likewise, claimant is not entitled to a medical arbiter examination. *See Von D. Bailey*, 59 Van Natta 847, 849 (2007).