
In the Matter of the Compensation of
RODNEY L. HOLLOWELL, Claimant
Own Motion No. 15-00072OM
OWN MOTION ORDER
Unrepresented Claimant
Cambridge – Sedgwick, Carrier

Reviewing Panel: Members Lanning and Johnson.

The carrier has submitted its recommendation against the reopening of claimant's Own Motion claim for a "worsening" of his previously accepted low back condition. ORS 656.278(1)(a). The carrier opposes reopening, contending, among other issues, that claimant's compensable condition does not require any medical treatment that qualifies for claim reopening. Based on the following reasoning, we deny claim reopening.

Pursuant to ORS 656.278(1)(a), among the requirements for the reopening of an Own Motion claim for a worsening of a compensable injury is a requirement that the worsening must require hospitalization, surgery (either inpatient or outpatient), or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the worker to return to work.¹ See *James J. Kemp*, 54 Van Natta 491 (2002).

Whether a worsening of the compensable injury requires hospitalization, inpatient or outpatient surgery, or "other curative treatment prescribed in lieu of hospitalization that is necessary to enable the injured worker to return to work" presents a medical question that must be addressed by persuasive medical evidence. *Terry L. Smith*, 55 Van Natta 2763 (2003).

¹ 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, 2541-42 (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.

Here, the record does not establish that claimant's accepted condition required hospitalization, surgery or other curative treatment that was prescribed in lieu of hospitalization that was necessary to enable him to return to work.² ORS 656.278(1)(a); 54 Van Natta at 2546. In other words, no physician recommended surgery or hospitalization for claimant's compensable condition. Moreover, the record does not establish that there was any medical treatment prescribed for his previously accepted condition that constitutes "other curative treatment prescribed in lieu of hospitalization that is necessary to enable the injured worker to return to work." See *Gregory Nalivaiko*, 68 Van Natta 583 (2016); *Danny L. Johnson*, 56 Van Natta 129 (2004).

Under such circumstances, the aforementioned statutory requirement for claim reopening has not been satisfied.³ Accordingly, the request for claim reopening is denied.⁴ Claimant's entitlement to medical services pursuant to ORS 656.245 is not affected by this order.

IT IS SO ORDERED.

Entered at Salem, Oregon on June 7, 2016

² The carrier also contends that claimant's Own Motion claim does not satisfy the "inability to work" requirement under ORS 656.278(1)(a). This matter need not be addressed because even if the "medical treatment" issue was found in claimant's favor, the record would still be insufficient to support claim reopening under ORS 656.278(1)(a) for the reasons expressed above.

³ If claimant wishes to submit further information addressing the "medical treatment" and "inability to work" components of the statutory standard, he may request reconsideration of our decision. However, because our authority to reconsider this decision expires within 30 days after the mailing date of the Own Motion Order, the reconsideration request must be filed within that 30-day period. OAR 438-012-0065(2).

⁴ Finally, because claimant is unrepresented, he may wish to consult the Ombudsman for Injured Workers, whose job it is to assist injured workers. He may contact the Ombudsman, free of charge, at 1-800-927-1271, or write to:

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