
In the Matter of the Compensation of
Own Motion No. 15-00033OM
ROBERT A. BOEHM, JR., Claimant
OWN MOTION ORDER REVIEWING CARRIER CLOSURE
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Liberty Mutual Ins, Carrier

Reviewing Panel: Members Johnson and Lanning.

Claimant requests of the April 24, 2015 Own Motion Notice of Closure that did not award additional scheduled permanent partial disability (PPD) for his “post-aggravation rights” new/omitted medical condition (right knee adhesions).¹ Based on the following reasoning, we affirm the closure notice.

FINDINGS OF FACT

On January 16, 1988, claimant sustained a compensable right knee injury. (Ex. 1). The insurer accepted the following conditions: “Right knee medial meniscus tear, right knee medial compartment osteoarthritis, right knee osteochondral fracture, right knee chondromalacia of the patella and right knee femoral trochlea chondromalacia.” (Ex. 16).

In August 1988, claimant underwent a partial medial meniscectomy. (Ex. 20-2). A November 26, 1990 Determination Order awarded 5 percent scheduled PPD for the right leg (knee). (Ex. 4). That award was for the 1988 partial medial meniscectomy. (Ex. 4-2).

A February 27, 1991 stipulation increased that award by 10 percent, for a total award of 15 percent scheduled PPD for loss of use or function of the right leg (knee). (Ex. 5). Claimant’s aggravation rights expired on November 26, 1995.

¹ Claimant’s January 16, 1988 claim was accepted as a disabling claim and was first closed on November 26, 1990. Thus, claimant’s aggravation rights expired on November 26, 1995. Therefore, when claimant sought claim reopening in April 2012, the claim was within our Own Motion jurisdiction. ORS 656.278(1). Consistent with our statutory authority, on June 6, 2012, we issued an Own Motion Order authorizing the reopening of the “worsened condition” claim and noted that when claimant was medically stationary, the insurer should close the claim pursuant to OAR 438-012-0055. (WCB Case No. 12-0045M). On August 15, 2014, the insurer voluntarily reopened the claim for a “post-aggravation rights” new/omitted medical condition (right knee adhesions). On April 24, 2015, the insurer issued its Notice of Closure for both reopened claims.

In January 2006, Dr. Walton, claimant's attending physician, performed a "right knee arthroscopy with partial medial meniscectomy and lateral retinacular release." (Ex. 8). Later that same month, Dr. Walton arthroscopically removed a "retained hematoma" from the right knee. (Ex. 10).

On January 18, 2006, claimant's Own Motion claim was reopened for a "worsening" of his previously accepted right knee conditions. (Ex. 11). *Robert A. Boehm, Jr.*, 58 Van Natta 168 (2006). An April 2, 2007 Own Motion Notice of Closure awarded temporary disability benefits. (Ex. 12).

On August 31, 2007, the insurer issued a denial of "right knee patellofemoral compression syndrome. (Ex. 15).

In September 2007, the insurer accepted a "post-aggravation rights" new/omitted medical condition (right knee flap tear of the posterior horn). (Exs. 16, 17). On September 26, 2007, we reopened the Own Motion claim for that "post-aggravation rights" new/omitted medical condition. (Ex. 19). *Robert A. Boehm, Jr.*, 59 Van Natta 2296 (2007).

An October 10, 2007 Own Motion Notice of Closure increased claimant's permanent disability award to 17 percent scheduled PPD for the right leg (knee). (Ex. 20). That award included a 5 percent permanent impairment value for the 1988 partial medial meniscectomy. (Ex. 20-2).

On April 12, 2012, Dr. Walton performed a right medial unicompartmental knee arthroplasty (UKA). (Ex. 25). The preoperative and postoperative diagnoses were right knee "medial compartment arthritis." (Ex. 25-1).

On June 6, 2012, we reopened claimant's Own Motion claim for a "worsening" of his previously accepted "right knee medial compartment arthritis." (Ex. 34). *Robert A. Boehm, Jr.*, 64 Van Natta 1073 (2012).

Dr. Walton provided ongoing follow-up care and continued to diagnose right knee osteoarthritis. (Exs. 31-2, 38-2, 40-2, 45-2, 47-2, 48, 50-2, 53-2, 54-3, 55-2, 56-2, 57-4, 58-1).

Claimant continued to have problems with his right knee. In January 2013, Dr. Walton recommended a bone scan, noting that claimant's ongoing problems were not the normal course for a UKA. (Ex. 50-1). Based on the bone scan

results, Dr. Walton recommended that the right medial UKA be revised to a total knee arthroplasty (TKA). (Exs. 52, 53).

On September 26, 2013, Dr. Walton performed a revision of the right medial UKA to a right TKA. (Ex. 59). He provided follow-up care and continued to diagnose right knee osteoarthritis. (Exs. 61-3, 63-2, 67-2, 69-2).

In December 2013, Dr. Walton requested authorization for an arthroscopy with lysis of adhesions. (Ex. 67-1). Subsequently, Dr. Walton explained that, following claimant's TKA, he developed adhesions (scar tissue) that limited his flexion motion and needed to be removed arthroscopically. (Exs. 69, 73, 80-4). Dr. Walton continued to diagnose right knee osteoarthritis. (Ex. 75).

On May 16, 2014, claimant requested that the insurer accept a "post-aggravation rights" new/omitted medical condition (right knee adhesions). (Ex. 76).

On August 15, 2014, the insurer accepted and voluntarily reopened claimant's Own Motion claim for a "post-aggravation rights" new/omitted medical condition (right knee adhesions). (Ex. 78).

On September 3, 2014, Dr. Walton performed a right knee arthroscopy with lysis of adhesions and lateral retinacular release. (Ex. 80). The preoperative and postoperative diagnoses were "postoperative adhesions following right total knee arthroplasty." (Ex. 80-1).

On January 26, 2015, Dr. Walton found that claimant's right knee condition was medically stationary. (Ex. 91-3). In February 2015, Dr. Walton noted that claimant could not repetitively use his right knee for more than two thirds of a period time and could not be on his feet for more than two hours (cumulative) in an 8-hour period. (Ex. 92). However, Dr. Walton indicated that this impairment was due to the previously accepted right knee medial compartment arthritis rather than the newly accepted right knee adhesions. (*Id.*)

An April 24, 2015 Own Motion Notice of Closure did not award any additional scheduled PPD for claimant's "post-aggravation rights" new/omitted medical condition (right knee adhesions). (Ex. 93).

Claimant sought review of the April 2015 Notice of Closure and requested the appointment of a medical arbiter. On July 17, 2015, we referred the claim to

the Director for the appointment of a medical arbiter. *Robert A. Boehm*, 67 Van Natta 1304 (2015).

On September 19, 2015, Dr. Kowalik, the medical arbiter, measured the following (right/left) knee ranges of motion (ROM): 115/145 degrees flexion and 0/0 degrees extension. He noted that there was no injury or disease to the contralateral left knee. He found grade 1 (mild) instability of the anterior cruciate ligament (ACL) and normal strength in the bilateral lower extremities. He also found that, due to the newly accepted right knee adhesions condition, claimant was not significantly limited in the repetitive use of his right knee and was not prevented from being on his feet for a total of more than two hours in an eight-hour period. Dr. Kowalik did not attribute any exam findings or permanent impairment to the newly accepted right knee adhesions condition. Instead, he found that the exam findings and the permanent impairment were due to the previously accepted conditions.

CONCLUSIONS OF LAW AND OPINION

The claim was reopened for the processing of a “post-aggravation rights” new/omitted medical condition (right knee adhesions). Such a claim may qualify for payment of permanent disability compensation. ORS 656.278(1)(b); *Goddard v. Liberty Northwest Ins. Corp.*, 193 Or App 238 (2004). However, as explained below, the record does not support an additional permanent disability award.

The Own Motion Notice of Closure issued on April 24, 2015. The applicable standards are found in WCD Admin. Order 15-053 (eff. March 1, 2015).

Only findings of impairment that are permanent and caused by the accepted compensable conditions may be used to rate impairment. OAR 436-035-0007(1); *Khrul v. Foremans Cleaners*, 194 Or App 125, 130 (1994). Impairment attributable to the previously accepted conditions, which have been processed to closure, cannot be considered. *Randy D. Schollenberger*, 66 Van Natta 1792 (2014) (no permanent disability awarded for impairment due to previously accepted condition instead of “post-aggravation rights” new/omitted medical condition); *Manuel O. Rivera*, 61 Van Natta 928 (2009) (same).

For the purpose of rating claimant’s permanent impairment, only the opinions of claimant’s attending physician at the time of claim closure, any findings with which he or she concurred, and a medical arbiter’s findings may be

considered. ORS 656.245(2)(b)(C); ORS 656.268(7); *Tektronix, Inc. v. Watson*, 132 Or App 483 (1995); *Koitzsch v. Liberty Northwest Ins. Corp.*, 125 Or App 666 (1994).

Here, Dr. Kowalik, the medical arbiter, performed a thorough and complete examination. Consequently, we rely on the medical arbiter report to rate claimant's permanent impairment.

Dr. Kowalik found no permanent impairment related to claimant's new/omitted medical condition of right knee adhesions. In so finding, Dr. Kowalik explained that claimant's impairment findings were related to the previously accepted conditions. Moreover, those previously accepted conditions had been the subject of claimant's prior permanent disability award.

In addition, the record establishes that the UKA and TKA surgeries were performed to treat the previously accepted, closed, and evaluated right knee "medial compartment osteoarthritis" condition. In this regard, the preoperative and postoperative diagnoses at the time of the UKA surgery were right knee "medial compartment arthritis." (Ex. 25-1). In addition, following the UKA and TKA surgeries, Dr. Walton continued to identify the condition that he was treating as "right knee osteoarthritis." (Exs. 31-2, 38-2, 40-2, 45-2, 47-2, 48, 50-2, 53-2, 54-3, 55-2, 56-2, 57-4, 58-1, 61-3, 63-2, 67-2, 69-2). Therefore, claimant is not entitled to an impairment value for the UKA/TKA surgery because it is not attributable to his right knee adhesions (which is the new/omitted medical condition pertaining to this claim closure).²

In conclusion, in the absence of permanent impairment attributable to his new/omitted medical condition (right knee adhesions), claimant is not entitled to an additional permanent disability award.³ See OAR 436-035-0007(7) (if there is

² Furthermore, although the right knee arthroscopy with lysis of adhesions and lateral retinacular release surgery was performed to treat the "post-aggravation rights" new/omitted medical condition (right knee adhesions), the standards do not provide a value for that surgery. OAR 436-035-0007(13)(a) (not all surgical procedures receive a value under these rules); OAR 436-035-0230(5)(d).

³ Any additional impairment due to a worsening of claimant's previously accepted conditions would not entitle him to an additional permanent disability award. ORS 656.278(1)(a); *Goddard*, 193 Or App at 244-45; *Robert Costello*, 59 Van Natta 1823, 1825-26 (2007); *Schollenberger*, 66 Van Natta at 1795 n 2.

no measurable impairment under the standards, no award of permanent disability is allowed); *David L. Urban*, 66 Van Natta 936, 941 (2014); *Schollenberger*, 66 Van Natta at 1795. Accordingly, we affirm the Notice of Closure.⁴

IT IS SO ORDERED.

Entered at Salem, Oregon on March 3, 2016

⁴ Claimant's total award to date is 17 percent scheduled PPD for loss of use or function of the right leg (knee).