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In the Matter of the Compensation of  
**CHRISTOPHER M. NAYLOR, Claimant**  
Own Motion No. 16-00029OM  
OWN MOTION ORDER  
Ernest M Jenks, Claimant Attorneys  
Bohy Conratt LLP, Defense Attorneys

Reviewing Panel: Members Weddell and Curey.

Claimant requests Own Motion relief, challenging the rate and payment of temporary disability benefits and seeking penalties and attorney fees for alleged discovery violations and unreasonable claim processing. Based on the following reasoning, claimant's requests are denied.

FINDINGS OF FACT

On August 7, 2008, claimant sustained a compensable left knee injury, which the insurer accepted for a left knee sprain and medial meniscus tear. The claim was closed on February 20, 2009, and claimant's aggravation rights expired on February 20, 2014. (Ex. 14).

On June 3, 2015, the insurer voluntarily reopened claimant's Own Motion claim for a worsening of his previously accepted left knee medial meniscus tear condition. (Ex. 49). On February 26, 2016, the insurer closed that "worsened condition" claim with an award of temporary disability benefits from May 21, 2015 through February 3, 2016. (Ex. 75).

On May 26, 2016 and June 28, 2016, claimant requested Own Motion relief, challenging the rate and payment of temporary disability benefits and seeking penalties and attorney fees for alleged discovery violations and unreasonable claim processing. Because this 2008 injury claim was in Own Motion status, the matter was referred to the Board.

CONCLUSIONS OF LAW AND OPINION

As previously noted, claimant's Own Motion claim was closed on February 26, 2016. Before claimant's request for Own Motion relief on May 26, 2016, he did not file a request for review of the February 2016 Notice of Closure. Pursuant to OAR 438-012-0060(2), claimant had 60 days from the mailing date of

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the Notice of Closure in which to file a request for Board review, or 180 days from the mailing date if he could establish “good cause” for failure to file the request within 60 days.

Here, the 60th day after the mailing date of the February 26, 2016 Notice of Closure was April 26, 2016. Therefore, claimant’s May 26, 2016 “request” (if it was intended as an appeal of the Notice of Closure) was untimely filed. Furthermore, the record lacks “good cause” for this untimely appeal. OAR 438-012-0060(2); *Joan Beaver*, 50 Van Natta 1357 (1998).

Accordingly, because claimant’s request for Own Motion relief is essentially premised on a timely appeal of the February 26, 2016 Notice of Closure and because his request was untimely, it follows that we are without authority to address the issues raised by claimant related to that closure notice (*i.e.*, temporary disability benefits, discovery, and penalty/attorney fee issues).<sup>1</sup>

**IT IS SO ORDERED.**

Entered at Salem, Oregon on September 28, 2016

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<sup>1</sup> In addition, there is no indication that an Own Motion claim has been reopened since the February 2016 claim closure. In the absence of an open Own Motion claim, claimant’s entitlement to temporary disability benefits (including the rate of such benefits) is not ripe for adjudication. In a similar vein, a carrier is not required to pay interim compensation pending Own Motion claim reopening. ORS 656.278(1)(a), (b); *Edward A. Billman*, 55 Van Natta 693 (2003).