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In the Matter of the Compensation of  
**DANIEL L. MARTIN, Claimant**  
WCB Case No. 15-01511  
**ORDER ON RECONSIDERATION**  
Dennis O'Malley, Claimant Attorneys  
Thaddeus J Hettle & Assoc, Defense Attorneys

Reviewing Panel: Members Johnson and Weddell.

On July 1, 2016, we abated our June 2, 2016 order that affirmed an Administrative Law Judge's (ALJ's) order that: (1) found that claimant's injury claim for an acute adjustment disorder with mixed anxiety condition was not prematurely closed; and (2) affirmed an Order on Reconsideration that awarded 35 percent whole person impairment for that condition. We abated our decision to consider the self-insured employer's motion for reconsideration regarding the "premature closure" issue. Having received claimant's response, we proceed with our reconsideration. For the following reasons, we adhere to our previous decision.

On reconsideration, the employer refers to its previous arguments that Dr. Turco's medical arbiter report is not persuasive, but that, if Dr. Turco's report is relied upon, it establishes that claim closure was premature. Specifically, the employer asserts that Dr. Turco opined that claimant's "overall prognosis will be quite good," and "strongly suggest[ed]" that he return for an additional six months of psychological treatment. (Ex. 48-4-5). The employer reasons that such statements describe a reasonable expectation of material improvement in claimant's condition and, therefore, establish that his condition was not "medically stationary" at the time of the November 26, 2014 claim closure. Thus, the employer contends that claimant's claim was prematurely closed, and that permanent impairment should not be evaluated. For the following reasons, we disagree with the employer's contentions.

A claim may be closed when the claimant's condition is medically stationary and there is sufficient information to determine the extent of permanent disability. ORS 656.268(1)(a); OAR 436-030-0020(1)(a). "Medically stationary" means that no further material improvement would reasonably be expected from medical treatment or the passage of time. ORS 656.005(17). The term "medically stationary" does not mean there is no longer a need for continuing medical care. *Maarefi v. SAIF*, 69 Or App 527, 531 (1984); *Dan W. Fielder*, 68 Van Natta 798 (2016).

When determining whether claim closure was premature, we consider the medically stationary status of only the accepted conditions at the time of claim closure and any direct medical sequelae. *See* ORS 656.268(15); OAR 436-035-0005(6) (defining direct medical sequelae); *Manley v. SAIF*, 181 Or App 431, 438 (2002); *Katherine A. Lapraim*, 68 Van Natta 39, 40 (2016). The issue of claimant's medically stationary status is primarily a medical question to be decided based on competent medical evidence. *Harmon v. SAIF*, 54 Or App 121, 125 (1981).

Here, *no* physician opined that claimant's accepted acute adjustment disorder with mixed anxiety condition was *not* "medically stationary," or that further material improvement in his condition would be reasonably expected from medical treatment, or the passage of time. To the contrary, in September 2014, Dr. Wicher (who examined claimant at the employer's request) opined that claimant's accepted condition was medically stationary. (Ex. 40-8). On November 3, 2014, Dr. Carver (claimant's attending physician) agreed with Dr. Wicher's opinion that claimant's condition was medically stationary. (Exs. 41, 42, 43). Furthermore, as explained in our prior order, Dr. Turco's opinion adequately described claimant's *permanent* impairment resulting from his accepted acute adjustment disorder with mixed anxiety condition and direct medical sequelae in concluding that the condition was "Class 2" with moderate symptoms. (Ex. 48-3-5).

We acknowledge that Dr. Turco opined that claimant "require[d] continued treatment of approximately 6 months' duration" and "strongly suggest[ed]" that he be returned for psychological treatment. (Ex. 48-4-5).<sup>1</sup> Nonetheless, a need for continuing medical care does *not* mean that claimant's accepted condition was *not* "medically stationary" at the time of claim closure. *Maarefi*, 69 Or App at 531; *Jesus M. Zarzosa*, 56 Van Natta 1683, 1684 (2004), *aff'd without opinion*, 201 Or App 216 (2005).

Moreover, considering his determination that claimant's *permanent* impairment from the accepted condition was "Class 2" with moderate symptoms, we do not interpret Dr. Turco's statement that claimant is "experiencing generalized anxiety and his overall prognosis will be quite good" to mean that further material improvement in claimant's condition was reasonably expected. (Ex. 48-4). In particular, we note Dr. Turco's report that claimant was "able to

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<sup>1</sup> As noted in our prior order, the Director's standards note that "Class 2" anxiety symptoms "[m]ay require extended treatment." OAR 436-035-0400(5)(b).

function at the job he is given, but does experience a significant sense of loss of self-esteem and an anxious problem.” (Ex. 48-3). According to Dr. Turco, claimant’s anxiety, depressive, and phobic symptoms “interfere with his psychological functioning,” and that his psychological problems were a direct medical sequela of his compensable injury. (Ex. 48-4). Thus, we find that Dr. Turco’s comments regarding claimant’s “overall prognosis” refer to claimant’s improvement in functional ability, and not an indication that his accepted condition (and direct medical sequela) would reasonably be expected to materially improve as a result of treatment or the passage of time. *See Kevin W. McClellan*, 65 Van Natta 560, 562 (2013) (interpreting a physician’s recommendation for further treatment to mean that the treatment was recommended to improve the claimant’s functioning, rather than with a reasonable expectation of material improvement in the claimant’s accepted conditions).

In conclusion, based on the foregoing reasons, we find that the record persuasively establishes that claimant’s accepted acute adjustment disorder with mixed anxiety condition was “medically stationary” at the time of claim closure. Therefore, the November 26, 2014 Notice of Closure was not premature. Consequently, we adhere to our affirmance of the ALJ’s order.

Finally, claimant is entitled to an attorney fee for his counsel’s services expended on reconsideration in response to the employer’s request. ORS 656.382(2); OAR 438-015-0070(5); *Antonio L. Martinez*, 61 Van Natta 1892, 1903-04 (2009). After considering the factors set forth in OAR 438-015-0010(4) and applying them to this case, we find that a reasonable fee for claimant’s attorney’s services on reconsideration is \$1,500, payable by the employer. In reaching this conclusion, we have particularly considered the time devoted to the issue on reconsideration (as represented by claimant’s response), the complexity of the issue, the value of the interest involved, and the risk that claimant’s counsel might go uncompensated.

Accordingly, on reconsideration, as supplemented herein, we adhere to and republish our June 2, 2016 order. The parties’ rights of appeal shall begin to run from the date of this order.

**IT IS SO ORDERED.**

Entered at Salem, Oregon on July 25, 2016