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In the Matter of the Compensation of  
WCB Case No. 14-05475  
**TIFFANY C. ROHDE**, Claimant  
ORDER ON REVIEW  
Ronald A Fontana, Claimant Attorneys  
Sather Byerly & Holloway, Defense Attorneys

Reviewing Panel: Members Lanning and Johnson.

Claimant requests review of Administrative Law Judge (ALJ) Mills's order that: (1) found that her right ankle injury claim was not prematurely closed; and (2) declined to award penalties or attorney fees for allegedly unreasonable claim processing. On review, the issues are premature closure, penalties, and attorney fees.

As a result of claimant's compensable injury, the self-insured employer accepted a right ankle sprain with talar tendon osteochondral lesions, right peroneal tendon tear/rupture, peroneal tendonitis, and Achilles tendonitis. (Ex. 9). After Drs. Green and Groman, who examined claimant at the employer's request, opined that the accepted conditions were medically stationary without permanent impairment, Dr. Gullo, claimant's attending physician, concurred with those opinions. (Exs. 6, 8).

Subsequently, the employer issued a Notice of Closure. (Ex. 10). After an Order on Reconsideration found that the claim was not prematurely closed, claimant requested a hearing.

Relying on Dr. Gullo's opinion, the ALJ concluded that claimant's accepted conditions were medically stationary. The ALJ explained that, while Dr. Gullo opined that claimant also had a diagnosis of Complex Regional Pain Syndrome (CRPS) that was related to the work injury and was not medically stationary, his opinion did not establish that the CRPS condition was a direct medical sequela of the accepted conditions. Further, the ALJ rejected claimant's argument that the unclaimed CRPS condition should, nonetheless, be considered part of claimant's "compensable injury." In doing so, the ALJ relied on *Stuart C. Yekel*, 67 Van Natta 1279, 1282 (2015), which declined to extend the rationale of *Brown v. SAIF*, 262 Or App 640 (2014), *rev allowed*, 356 Or 397 (2014), to the rating of permanent impairment for a closed claim. Therefore, the ALJ found that the claim was not prematurely closed and that penalties/attorney fees were not warranted.

On review, claimant contests the ALJ's "medically stationary" conclusion, and otherwise argues that the Notice of Closure was improper. Based on the following reasoning, we affirm.

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(7). 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); *Pennie Richerd-Puckett*, 61 Van Natta 336 (2009).

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);<sup>1</sup> *Manley v. SAIF*, 181 Or App 431, 438 (2002) (accepted conditions and direct medical sequelae must be medically stationary at claim closure). Claimant bears the burden of proving that her condition was not medically stationary at claim closure. ORS 656.266(1); *Berliner v. Weyerhaeuser Corp.*, 54 Or App 624 (1981).

Here, it is undisputed that claimant's accepted conditions were medically stationary at the time of claim closure. Additionally, claimant does not allege that the CRPS condition is a direct medical sequelae of the accepted conditions. *See* ORS 656.268(15). However, citing *Brown*, she contends that because Dr. Gullo opined that her CRPS condition was caused by her work injury and the CRPS condition was not medically stationary, the Notice of Closure was premature. *See Brown*, 262 Or App at 652 (a "compensable injury" is an "accidental but work-related injury incident"). Relying on the *Yekel* rationale, we have previously declined to extend the *Brown* rationale to the context of premature closure disputes.<sup>2</sup> *See Katherine A. Lapraim*, 68 Van Natta 39 (2016).

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<sup>1</sup> Claimant's claim was closed by a June 24, 2014 Notice of Closure. Thus, the applicable rules are found in WCD Admin. Order 11-058 (eff. January 1, 2012) and 12-061 (eff. January 1, 2013).

<sup>2</sup> A footnote in *Magana-Marquez v. SAIF*, 276 Or App 32, 34 n 2 (2016), suggests that, based on *Brown v. SAIF*, 262 Or App 640, *rev allowed*, 356 Or 397 (2014), the proper focus for assessing a claimant's entitlement to a permanent disability award is whether the permanent impairment or work disability is related to the compensable injury/occupational disease, rather than the accepted conditions. However, we have considered that footnote to be *dicta*. *William Snyder*, 68 Van Natta 199, 200 n 1

In *Lapraim*, citing the *Manley* rationale, we reasoned that, when determining whether a claim closure is premature, we consider the medically stationary status of only the accepted conditions and their direct medical sequelae at the time of claim closure, rather than the medically stationary status of unaccepted new/omitted conditions. 68 Van Natta at 40. Accordingly, consistent with the *Lapraim* holding, because the record establishes that claimant's accepted conditions were medically stationary and that there were no direct medical sequelae, the Notice of Closure was not premature.<sup>3</sup>

Claimant also contends that the Notice of Closure was improper because it did not include a description of claimant's job as required by OAR 436-030-0020(2)(b)(A) and (7)(c). Based on the following reasoning, we disagree.

OAR 436-030-0020(2)(a) provides that "sufficient information" for closure purposes may be provided by an attending physician's written statement that there is no permanent impairment, residuals, limitations, loss of function or change in the worker's physical abilities.

Here, Dr. Gullo provided such a statement in the form of his concurrence with Drs. Green and Groman's report. (Ex. 8). Under such circumstances, the employer is not required to include a description of claimant's job with the Notice of Closure. *See, e.g., Barbara J. Lovejoy*, 65 Van Natta 2572, 2574 (2013).

Finally, claimant asserts that the Notice of Closure should be set aside because it was not accompanied by an Updated Notice of Acceptance. *See* OAR 436-030-0020(7)(d) (WCD Admin. Order 11-058; eff. January 1, 2012). However, this issue was not raised during the reconsideration proceeding. *See* ORS 656.283(6); *Gaylen J. Kiltow*, 67 Van Natta 639, 642 (2015) (issues that were not raised by a party to the reconsideration may not be raised at hearing unless the issue arises out of the reconsideration order itself).

In conclusion, based on the aforementioned reasoning, and in addition to the reasons expressed in the ALJ's order, we affirm.

### ORDER

The ALJ's order dated August 24, 2015 is affirmed.

Entered at Salem, Oregon on February 17, 2016

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(2016). Further, we have concluded that the most administratively judicious approach to this subject is to continue to adhere to the *Yekel* rationale of, unless the court rules to the contrary.

<sup>3</sup> Because the Notice of Closure was not premature, claimant is not entitled to a penalty or attorney fees.