



# News & Case Notes

<u>Subject</u>	<u>Claimant</u>	<u>37 NCN Issue</u>
<b><u>AGGRAVATION</u></b>		
“Actual Worsening” of Accepted Condition Required - Increased Symptoms/Reduced “ROM” Findings (Without Physician’s Supporting Opinion) Insufficient	Judy Munstenteiger	5
Requires “Actual Worsening” of Previously Accepted Condition - “273(1)”	Kimberly A. Samard	10
<b><u>ATTORNEY FEE</u></b>		
“382(1)” - Interest on Appealed Attorney Fee/Cost Awards “Due Under” Appealed Order - “Refusal” to Pay Interest - “Per Se” Unreasonable	Jorge A. Rodriguez	3
“383(1)” - Not Applicable For “Recon” Services Resulting in Rescission of NOC	Robert L. Stanley	5
“383(1)” - Not Applicable to TTD Award From Order on Reconsideration - “268(6)(c)” Controls	Mekayla N. Dancingbear	4
“Responsibility” Denial - “308(2)(d)” - “Statutory Maximum” Award Cumulative - For Services Provided at All Litigation Levels - “Extraordinary Circumstances” Must Be Raised at Hearing Level	Melissa Hartvigsen	8
<b><u>CDA</u></b>		
Reconsideration - “10-Day” Period Expired on Saturday - Next Business Day, Monday, Final Day for Filing “Recon” Request/Addendum	Michael York	11
<b><u>CLAIM PROCESSING</u></b>		
Partially Prospective “Medical Service” Denial - Denied Treatment “On and After” a Specific Date - Partially Invalid	Michael A. Norris	1
Prior Litigation Order Found Claimed Conditions “Encompassed” W/I Previously Accepted/Processed Condition - Carrier Not Required to Reopen/Re-Close Claim - “262(7)(c)”	Randy G. Simi	8

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### CLASSIFICATION

Reclassification Request - WCD Dismissed Review, Must First Address "277(1)(b)" Attorney Fee - Board "Fashions a Remedy"	Donald L. Brant	7
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### COMBINED CONDITION

Consists of "Two Medical Problems Simultaneously" - Carrier Met "Burden of Proof" Under "266(2)(a)" - Work Injury Not Major Cause of Disability/Treatment for "Combined" Shoulder Condition (Exacerbation of Symptoms from Preexisting Arthritic Condition)	Mario Carrillo	12
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"Post-Injury" DVT Condition (Resulting From Injuries From Lower Extremities) Combined With "Pre-Injury" DVT Condition - Carrier's Acceptance/Denial in Same Document - Procedurally Valid	Mitchell D. Clem	5
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"Preexisting Condition" Includes Treatment/Disability for Previous "Out-of-State" Injury for Claimed Condition - "005(24)," "005(7)(a)(B)," "266(2)(a)"	Bruce H. Wooley	11
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### CONSEQUENTIAL CONDITION

Depression - Emotional Reaction to Claim Processing Cannot Be Considered - Concerns About Inability to Work/Return to Work Can Be Considered	Timothy J. Poppleton	10
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### COURSE & SCOPE

"Going and Coming" Rule - "Parking Lot" Exception Not Applicable - Employer's Lease Did Not Establish "Control" Over Parking Lot	Tracey Curtis	2
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"Going/Coming" Rule - "Traveling Employee" Exception - Flight Attendant's "Airport Parking Lot" Injury - 18 Hours Before Work Shift Began - Not in "Travel" Status	Rebecca J. Strachan	7
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"Rest Break/Walking" Injury - "Personal Comfort" Doctrine Applied - Met "Course Of" Prong, But "Arising Out Of" Not Satisfied - Fall on Public Sidewalk From Tree Root, No "Employer-Related" Risk	Lori C. Watt	6
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### DISCOVERY

Untimely Disclosure of Requested Payroll Records - Penalties/Fees Based on Compensation Award	William E. Easley	1
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**EVIDENCE**

Claimant's Submission of Report Under "7-Day" Rule - Report Admissible - Denial of Carrier's "Rebuttal Evidence" Motion (With "Cross-Examination" Opportunity) & Exclusion of Carrier's "Post-Hearing" Submission of Documents (Which Were Not Presented at Hearing) - No "Abuse of Discretion" in ALJ's Rulings	Marty J. Stark	4
Exclusion of Expert Witness Testimony for Untimely "Notice" Under "007-0016" - ALJ Did Not Abuse Discretion - "Material Prejudice" to Opposing Party, Lack of "Good Cause" for Rule Violation	John Kramer	12
"Off Record" Discussion/ALJ's Evidentiary Ruling Not Discernible From Record - Insufficiently Developed for "Abuse of Discretion" Review - Remand Warranted	Sharon L. Nelle	4

**EXTENT**

Impairment - "Chronic Condition" - "Significant Limitation/Repetitive Use" - "Pre-WCD Industry Notice" - "Important/Notable" Limitation/Difficulty	Angelica M. Spurger	12
Impairment Findings - Arbiter Findings Ambiguous (Appeared to Consider Denied Degenerative Condition) - "AP-Ratified" Findings "More Accurate" - "035-0007(1), (5)"	Richard K. Moffat	8
Impairment Findings - Fatigue/Attention Deficit Due to Brain Condition - "AP" Findings More Accurate Than Arbiter Panel's Findings - "035-0390(10)"	Mary M. Harvey	7
Impairment Findings - "Newly Accepted Condition" - Findings Rated All Accepted Conditions, Including "New" Condition - "035-0007(3)(b)"	Sandra Ocapan-Pantoja	7
Impairment Findings - "Surgery-Related" Impairment Due to "Combined Condition" - Denied Condition as of Claim Closure - Not Ratable Impairment - "268(1)(b)"/"035-0014(4)"	Fred D. Harris	9

**ISSUE PRECLUSION**

Unappealed Order on Reconsideration TPD Award - Found "AP" Had Not Released Claimant to "At-Injury" Job - Finding Preclusive on Carrier's Subsequent Claim Processing	Terry E. Mason	3
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<b><u>JURISDICTION</u></b>		
"319(6)" - Hearing Request Untimely Filed - Challenged Carrier's Calculation of "Same Wages" (In Lieu of TTD) Under "262(4)(b)" & "060-0025(2)" More Than Two Years After Alleged Miscalculation	Justin A. Swint	4
"Vocational Services-Related" Attorney Fee Under "385(1)" - WCD Authority	Robert L. Montgomery	5
<b><u>MEDICAL SERVICES</u></b>		
Denial of "Current" Medical Treatment - Not Invalid "Prospective" Denial	Randy W. Collins	11
<b><u>NEW/OMITTED MEDICAL CONDITION</u></b>		
Separate Psychological Conditions - Analyzed Under Different "Compensability" Standards - "PTSD" as a "Mental Disorder" Under "802(3)" - "Adjustment Disorder" as a "Consequential Condition" Under "005(7)(a)(A)"	Timothy L. Ogden	9
<b><u>OFFSET</u></b>		
Carrier Not Authorized to Unilaterally Offset CDA Proceeds by Alleged PPD Overpayment	Javier Pimentel-Espinoza	2
Carrier's Payment of TTD Benefits Granted by Final Order on Reconsideration - Subject to "25 Percent Offset Limitation" Under "268(14)"	Jose Segovia-Funes	12
<b><u>OWN MOTION</u></b>		
Claimant's Affidavit Included With "Post-Arbitrator" Brief - Timely Submitted Under "012-0060(4)"	Sandra C. Oviedo	1
Claim Closure - Claimant Did Not Respond to Carrier's "30-Day No Treatment" Letter ("030-0034(1)") - Valid Basis for Closure	Joseph O. Tompkins	4
Hearing Referral - Carrier Did Not Provide Reviewable Record - ALJ Directed to Issue Recommendation, Consider Imposition of Penalties/Attorney Fees for Carrier Rule Violations - "012-0017(1)," "012-0110(1)"	Brian L. Dugger	11
Penalties/Attorney Fees - Failure to Pay TTD on "Reopened" Claim, Noncompliance with Prior Board Order - Carrier's Claim Processing Unreasonable	Sandra L. Sanders	2

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**OWN MOTION (CONT.)**

Permanent Disability - "278(2)(d)" Limitation - "Redetermination" of Current Disability, Before Application of "Limitation" for Prior Award to Same Body Part	James D. Miley	11
PPD - "278(2)(d)" Limitation Applies to "Whole Person" Permanent Impairment (Including Condition Without Prior PPD Award)	Sandra L. Liske	1
PTD - Entitlement Based On "Pre-Injury" Disability, Last PPD Award Before Expiration of "Agg Rights," & Disability Due to "Post-Agg Rights" New/Omitted Medical Condition	Timothy C. Guild	11
"PTD" Request - "Fact Finding" Hearing Not Necessary (No Credibility/Veracity Dispute, Documentary Record Sufficiently Developed) - "Willingness to Work" Evaluation Based as of Date of Claim Closure	Lloyd D. Irwin, Jr.	7
Request for Rescheduled Arbiter Exam Denied - ARU Scheduled "Record Review" After Claimant Did Not Attend First Arbiter Exam W/O Providing Explanation	Susan J. Durrant	4
TTD - "Curative" Treatment for "New/Omitted Medical Condition" - Physical Therapy/Steroid Injection - Temporary Pain Relief - "278(1)(b)"	Preston E. Page	2
"Worsened Condition" Claim - Claimant's Affidavit/Documents Established Presence in "Work Force" Before "Disability Date" - Carrier's Recommendation Against Reopening Not Unreasonable	Stuart A. MacDonald	12

**PENALTIES**

Carrier's Unauthorized "Offset" Unreasonable, But Penalty/Fees Waived by CDA	Javier Pimentel-Espinoza	2
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**PENALTY**

"268(5)(f)" - Unreasonable Claim Closure - "Correctness" of Closure Placed at Issue Via Hearing Request Seeking "Penalty"	Warren D. Duffour	2
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<b><u>PENALTY (CONT.)</u></b>		
"268(5)(g)" - Recon Order's "Work Disability" Award Based on "Info" Carrier Could Not Reasonably Have Know at Claim Closure - "AP" Had Provided "Pre-Closure" Release to "At Injury" Job, Which Changed "Post-Closure"	Maria D. Alvarado-Depineda	8
Separate Unreasonable Acts - Discovery Violation/Unreasonable Denial - Separate Amounts "Then Due" - As of Date Violation "Cured" & Date of "Hearing Record" Closure	Sherrie L. Brandaw	7
TTD Payment - Not Unreasonable - "AP" Offered Inconsistent Opinions - Reasonable For Carrier to Seek Clarification From "AP"	Devynne C. Krossman	3
<b><u>PREMATURE CLOSURE</u></b>		
"NOC" Found Invalid - "Updated Notice of Acceptance" Violated "030-0015" - Included "Conditional" in Title	William Hoffnagle	5
<b><u>RECONSIDERATION PROCEEDING</u></b>		
"268(5)(e)"/"ORS 656.214(2)(b)"/"035-0007(2)" - Carrier "Recon" Request of "NOC" - Limited to "Impairment" - Reduction of "Impairment" Necessarily Resulted in Reduction of "Work Disability" Award	Zachary J. McEntire	1
"Med Stat" Date in NOC Raised, But Not TTD Award - No ARU Error in Only Addressing "Med State" Date, But Affirming TTD Award - Carrier Entitled to Recover TTD "Overpayment," Despite "Med Stat" Date Modification	Jared L. Bledsoe	5
<b><u>RESPONSIBILITY</u></b>		
"O.D."/LIER - "Impossibility" Defense -"Presumptively Responsible" Carrier Did Not Prove "Impossible" for Its Coverage to Have Caused Decedent's Disease	Henry G. Miller, DCD	10
<b><u>STANDARDS</u></b>		
Work Disability - Claimant Unable to Perform All "Regular Work" Duties - One of the "Functions/Tasks" of Her Job - Performed on "Steady or Customary" Basis - "214(1)(d), (2)(a)", "035-0005(15)"	Amanda Armato	8

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<b><u>STANDARDS (CONT.)</u></b>		
Work Disability - Claimant Was "Released to Regular Work" - Record Did Not Establish That "Job Description" Represented "Regular Work" That Claimant Performed	Ralph T. Nisbet	5
<b><u>SUBJECT WORKER</u></b>		
Gestational Carrier For Surrogacy Center - Center Did Not Provide Remuneration for Services, Did Not Have Right to Control Carrier's Activities	Petra Lorenzen	8
"Non-Subject Worker" ("027(15)") - Trucker Had "Ownership Interest" in Truck Furnished, Maintained, Operated for a Motor-Carrier - Transfer of Title Not Determinative	Vladmir V. Ghelan	11
"Right to Control"/"Nature of Work" Tests - Intermittent Maintenance Work for Trucking Business - Not "Sole Proprietor"/"Independent Contractor" - "005(30)"/"027(7)(a)"/"670.600(2)"	Warren Nordland	9
<b><u>TEMPORARY DISABILITY</u></b>		
"AP" Authorization/ "Reasonable Inference" From Surgery/ Hospital Records - "060-0020(4)" - Applies to "Claim Closure/Recon" TTD Benefits	Jorge Rodriguez	3
Claimant's "Modified Work" Job Withdrawn - Inclement Weather - TTD Reinstated - "268(4)," "060-0030(6)"	William E. Easley	1
<b><u>THIRD PARTY DISPUTE</u></b>		
"Extraordinary" Attorney Fee Not Granted - Complex, Time Consuming Investigation/Discovery - But No Trial/Mediation, Settlement Approximately 1/3 of Carrier's Lien - Carrier's "No Position" Not Determinative	Jerry D. Smith	7
<b><u>TTD</u></b>		
"325(5)(a)" - Carrier's Conversion of TTD Benefits to TPD Benefits Unreasonable - AP "Modified Job" Approval Had Been Retracted	Ronald D. McAllister	8

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<b><u>TTD (CONT.)</u></b>		
Calculation of "AWW" for Workers With "Irregular Wages" - "Averaging" Method Under Former Version of "060-0025(4)" - W/I Director's (WCD's) Discretion/Complied With "210(2)(d)(A)" - Subsequent Rule Amendment Did Not Mean Acknowledgment of Former Rule's Invalidity	Angela Simmons	12
Rate - Former "060-0025(4)" - "Irregular Earnings" - Calculation of AWW Based on 52-Week Average of Weekly Earnings - W/I Director's Authority	Richard Poland	2
<b><u>WORK DISABILITY</u></b>		
"BFC" - Combination of DOT Codes for "At Injury" Job - Based on Job Descriptions, Job Analysis, Affidavits; "RFC" - "AP" Release, Based on Overall Lifting Capability - "035-0012(8)(g), (9)(a)(A), (10)	Scott T. Richardson	6
<b><u>WORKER REQUESTED MEDICAL EXAMINATION</u></b>		
"325(1)(e)" - Carrier's Denial Erroneously Referred to IME (Rather Than "Record Review") - No Entitlement to WRME	Lorinda L. Gauthier	1