

“WORSENERD CONDITION” CLAIMS -
“CLAIM PROCESSING” SCENARIOS

There are many situations that will likely confront a carrier when processing an Own Motion claim for a worsened condition under ORS 656.278(1)(a) and the Board’s Division 012 administrative rules. To provide further clarification regarding a carrier’s duties, the following general scenarios are offered. Because the actual facts confronting a carrier in any particular claim will vary, these scenarios are designed to provide a general framework for claim processing actions that may arise and should be considered. As such, these scenarios are neither intended to encompass all potential claim processing decisions that an Own Motion carrier may face nor do they represent a Board ruling on any specific claim processing matter. The general scenarios for the processing of Own Motion claims for worsened conditions are as follows:

1. No dispute over claim reopening. Carrier receives a proposed surgery request from claimant’s attending physician for a previously accepted condition. If carrier authorizes the surgery, there is no dispute regarding the causal relationship between the surgery and claimant’s previously accepted condition. As such, carrier has 30 days to either voluntarily reopen the claim for a “worsened condition” or submit an Own Motion Recommendation for or against claim reopening. If carrier does not take either action within the aforementioned 30-day period, claimant may request Own Motion relief from the Board.
2. Dispute over propriety of surgery. Carrier receives a proposed surgery request from claimant’s attending physician for a previously accepted condition. Carrier does not dispute the causal relationship between the proposed surgery and claimant’s previously accepted condition, but questions the propriety of the surgery under WCD rules. Under these circumstances, carrier would submit an Own Motion Recommendation against claim reopening, based on the surgery dispute. Thereafter, the Board would defer further action to await resolution of the surgery issue. In the meantime, claimant may seek resolution of the surgery dispute through either a managed care dispute resolution review process or a Director’s medical review.
3. Dispute over “worker” status. Carrier receives a proposed surgery request from claimant’s attending physician for a previously accepted condition. Carrier does not dispute the causal relationship between the proposed surgery and claimant’s previously accepted condition and also does not question the propriety of the surgery. However, carrier disputes the claimant’s “worker” status. As such, carrier would submit an Own Motion Recommendation against claim reopening, based on its contention that the claimant was not a “worker.” If carrier does not submit an Own Motion Recommendation within the required 30-day period, claimant may request Own Motion relief from the Board.

4. Dispute over causal relationship between surgery and accepted condition. Carrier receives a proposed surgery request from claimant's attending physician for a previously accepted condition. If carrier disputes the causal relationship between the surgery and claimant's previously accepted condition, the carrier should issue a denial within the time requirements of ORS 656.262 (if denying compensability) or ORS 656.308(2) (if denying responsibility). Claimant has 60 days within which to request a hearing before the Hearings Division from carrier's denial (180 days, if claimant can establish "good cause" for an untimely hearing request). If carrier does not issue a denial within the aforementioned time period, claimant can request a hearing before the Hearings Division regarding a *de facto* denial. Unless and until the denial is set aside, the carrier does not have any Own Motion claim processing obligations.
5. Dispute over causal relationship between claim for reopening and accepted condition. Carrier receives claimant's request for claim reopening or temporary disability benefits. If carrier disputes the causal relationship between the claim and claimant's previously accepted condition, the carrier should issue a denial within the time requirements of ORS 656.262 (if denying compensability) or ORS 656.308(2) (if denying responsibility). Claimant has 60 days within which to request a hearing before the Hearings Division from carrier's denial (180 days, if claimant can establish "good cause" for an untimely hearing request). If carrier does not issue a denial within the aforementioned time period, claimant can request a hearing before the Hearings Division regarding a *de facto* denial. Unless and until the denial is set aside, the carrier does not have any Own Motion claim processing obligations.
6. Dispute over "inability to work" component or "work force" status. Carrier receives claimant's request for claim reopening or temporary disability benefits. Carrier does not dispute the causal relationship between the claim and claimant's previously accepted condition, but contends that the record lacks a medical opinion establishing that claimant has a worsened condition that has rendered him/her unable (totally or partially) to work or that claimant was not in the work force. Under this scenario, carrier would submit an Own Motion Recommendation against claim reopening based on this contention. If carrier does not submit an Own Motion Recommendation within the required 30-day period, claimant may request Own Motion relief from the Board.
7. Dispute over "surgery, hospitalization, curative treatment" component. Carrier receives a medical bill for claimant's previously accepted condition. Carrier does not dispute the causal relationship between the claim and claimant's previously accepted condition, but contends that the claim is not based on a worsened condition requiring surgery, hospitalization, or curative treatment prescribed in lieu of hospitalization that is necessary to enable the claimant to return to work. Under this scenario, carrier

would submit an Own Motion Recommendation against claim reopening based on this contention. If carrier does not submit an Own Motion Recommendation within the required 30-day period, claimant may request Own Motion relief from the Board.

8. Dispute over causal relationship between “worsened condition” claim and accepted condition. Carrier receives a medical bill for claimant’s previously accepted condition. If carrier disputes the causal relationship between the claim and claimant’s previously accepted condition, the carrier should issue a denial within the time requirements of ORS 656.262 (if denying compensability) and ORS 656.308(2) (if denying responsibility). Claimant has 60 days within which to request a hearing before the Hearings Division from carrier’s denial (180 days, if claimant can establish “good cause” for an untimely hearing request). If carrier does not issue a denial within the aforementioned time period, claimant can request a hearing before the Hearings Division regarding a *de facto* denial. Unless and until the denial is set aside, the carrier does not have any Own Motion claim processing obligations. If denial is set aside and the carrier contends that the claim is not based on a worsened condition requiring surgery, hospitalization, or curative treatment prescribed in lieu of hospitalization that is necessary to enable the claimant to return to work, the carrier would submit an Own Motion Recommendation against claim reopening based on this contention. In response to the Recommendation, claimant may submit to the Board medical evidence of a worsened condition requiring surgery, hospitalization, or curative treatment prescribed in lieu of hospitalization that is necessary to enable claimant to return to work. On the other hand, if the carrier does not submit an Own Motion Recommendation within the required 30-day period, claimant may request Own Motion relief from the Board, which may also include the submission of the aforementioned medical evidence.

Finally, in the event that a carrier unreasonably or unjustifiably fails to comply with a Board Own Motion rule, such conduct may result in the imposition of penalties and attorney fees pursuant to ORS 656.262(11) and OAR 438-015-0110, exclusion of evidence, and referral for a fact finding hearing. OAR 438-012-0110(1).