
In the Matter of the Compensation of
SHARON R. CARON, Claimant
WCB Case No. 02-02946
ORDER ON REVIEW
Floyd H Shebley, Claimant Attorneys
Johnson Nyburg & Andersen, Defense Attorneys

Reviewing Panel: Members Lowell, Bock and Phillips Polich. Member Phillips Polich dissents.

Claimant requests review of Administrative Law Judge (ALJ) Mills' order that: (1) found that claimant's injury claim was not prematurely closed; and (2) affirmed an Order on Reconsideration that did not award unscheduled permanent disability. On review, the issues are premature closure and, alternatively, unscheduled permanent disability.

We adopt and affirm the ALJ's order.

ORDER

The ALJ's order dated September 16, 2002 is affirmed.

Entered at Salem, Oregon on October 14, 2003

Member Phillips Polich, dissenting.

The ALJ and majority find that the persuasive medical evidence was insufficient to establish that claimant's accepted conditions were not medically stationary when her claim was closed. Consequently, they conclude that the claim was not prematurely closed. I respectfully disagree.

Pursuant to ORS 656.268(1)(a), an insurer is entitled to close the claim and determine the extent of disability only when (1) the worker has become medically stationary; and (2) there is *sufficient information* to determine the permanent impairment. *See Gloria Garibay, 52 Van Natta 2251, 2252 (2000)*. OAR 436-030-0020(2) defines "sufficient information" on which to close a claim as including the information required by OAR 436-010-0280 and OAR 436-035 (The Disability Rating Standards) or a physician's written statement clearly indicating that there is no permanent impairment. OAR 436-035-0007(13), a provision included within the rating standards, directs that impairment findings

made by a medical provider or consulting physician at the time of closure may be used to determine impairment only if the worker's attending physician concurs with such findings.¹

Here, the insurer relied entirely on the reports of Drs. Farris, McFarland, Eckman, and Courogen, all insurer-arranged medical examiners. Each opined that claimant's accepted condition was medically stationary and produced no permanent impairment. Neither claimant's attending physician, Dr. Njegovan, nor her associate, Dr. Long, concurred in the findings made by the examiners with respect to medically stationary status or permanent impairment.

Reading OAR 436-030-0020(2) consistently with OAR 436-035-0007(13), I interpret OAR 436-020-0020(2) to require that a physician's findings with respect to impairment for the purposes of closure may be considered only if the physician is an attending physician or a physician with whom the attending physician concurs. Here, because claimant's attending physician did not concur in the medical opinions of Drs. Farris, McFarland, Eckman or Courogen, the impairment findings they reported cannot be considered in ascertaining whether there was "sufficient information" to determine impairment.

In the absence of the insurer-arranged medical examiners' impairment opinions, the record lacks "sufficient information" to determine permanent impairment. Therefore, the requirements of ORS 656.268(1)(a) have not been satisfied. It follows that the insurer's closure was premature. Accordingly, I dissent.

¹ Because claimant's claim was closed in January 2002, *former* OAR 436-035-0007(13) applies.