
In the Matter of the Compensation of
CREIGHTON E. KENNEY, Claimant
WCB Case No. 11-05964, 10-06553
ORDER ON RECONSIDERATION
Unrepresented Claimant
Holly O'Dell, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Langer and Weddell.

On July 13, 2012, we withdrew our June 13, 2012 order that affirmed an Administrative Law Judge's (ALJ's) order that upheld the SAIF Corporation's denial of claimant's new/omitted medical condition claim for a left knee condition. We took this action to consider a number of issues raised by claimant regarding the medical opinions, SAIF's claim processing, and evidentiary matters. Having received SAIF's response, we proceed with our reconsideration.¹

To begin, claimant contends that he was prevented from cross-examining the medical experts and other individuals who presented evidence that was admitted into the record. He also requests "copies of communication between SAIF and Dr. Pollard." Yet, the record does not indicate that he made such evidentiary requests before the ALJ or objected to the ALJ's closure of the hearing record. (1 Tr. 21-60).² Under such circumstances, we will not consider, on appeal, those evidentiary matters that claimant could have asserted before the hearing record was closed.

In a similar vein, claimant raises, for the first time, the issue of alleged discovery violations. Because that issue was also not raised before the ALJ, we do not consider it on review.

¹ Because claimant is unrepresented, he may wish to consult the Ombudsman for Injured Workers. He may contact the Ombudsman, free of charge, at 1-800-927-1271, or write to:

DEPT OF CONSUMER & BUSINESS SERVICES
OMBUDSMAN FOR INJURED WORKERS
PO BOX 14480
SALEM OR 97309-0405

² The record includes hearing transcripts from February 23, 2011 and July 20, 2011. We refer to the February 23, 2011 and July 20, 2011 transcripts as 1 Tr. and 2 Tr., respectively.

Claimant also objects to that portion of the ALJ's order that declined to continue the hearing to allow him to seek a Worker Requested Medical Examination (WRME). (2 Tr. 13-14). We find no abuse of discretion in the ALJ's ruling. *See Marlon Bolanos-Guzman*, 59 Van Natta 2690 (2007).

Finally, claimant challenges the accuracy of representations contained in the opinion expressed by Dr. James, as well as the opinion of Dr. Pollard (whose opinion, he asserts, was based on Dr. James's erroneous representations). Yet, our decision was not based on their opinions. Rather, we affirmed the ALJ's conclusion that the record lacked a medical opinion persuasively supporting a conclusion that claimant's left knee ACL condition is causally related to his work activities or 2004 injuries. Moreover, regardless of the ultimate basis for Dr. Pollard's opinion, the fact remains that he neither expressly addressed the cause of claimant's left knee ACL rupture nor attributed the condition to a work injury.

In conclusion, we have considered all of claimant's contentions.³ After doing so, we adhere to our previous conclusion that the record is insufficient to establish the compensability of the claimed left knee condition.

Accordingly, on reconsideration, as supplemented, we republish our June 13 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 August 15, 2012

³ Referring to rules pertaining to the Workers' Compensation Division's authority, claimant also seeks "fines or penalties" for SAIF's "failure to follow the law as required." Such rules, pertaining to the Workers' Compensation *Division's* authority, have no application to the Board. In any event, to the extent that claimant's request could be interpreted as a claim for penalties under ORS 656.262(11)(a) for unreasonable claim processing and assuming (without deciding) that SAIF's conduct was considered to be unreasonable, there are no amounts then due on which to base a penalty.