
In the Matter of the Compensation of
RON L. DOETSCH, Claimant
Own Motion No. 16-000300M
INTERIM OWN MOTION ORDER POSTPONING ACTION ON REVIEW OF
CARRIER CLOSURE

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Reviewing Panel: Members Johnson and Weddell.

Claimant requests review of the April 7, 2016 Own Motion Notice of Closure that did not award additional permanent partial disability (PPD) for his “post-aggravation rights” new/omitted medical condition (C5-6 disc herniation).¹ On review, he contends that his claim was prematurely closed. Alternatively, he seeks the appointment of a medial arbiter. Based on the following reasoning, we are not persuaded that claim closure was premature. Consequently, we postpone our further review and refer the claim to the Director to appoint a medical arbiter.

FINDINGS OF FACT

On August 4, 2015, claimant’s Own Motion claim was voluntarily reopened for a “post-aggravation rights” new/omitted medical condition (C5-6 disc herniation). (Ex. 3).

On January 5, 2016, Dr. Keiper, consulting neurosurgeon, examined claimant and requested authorization from the insurer to perform surgery (anterior cervical discectomy with decompression of the spinal cord or nerve roots followed by a fusion at C6-7). (Ex. 7).

On February 4, 2016, Dr. Bergquist, neurosurgeon, examined claimant on behalf of the insurer. (Ex. 9). Dr. Bergquist opined that the requested surgery was not due to the accepted disc herniation. (Ex. 9-7). He also stated that the newly accepted C5-6 disc herniation condition was medically stationary. (Ex. 9-9).

¹ Claimant’s December 2, 2008 claim was accepted as a non-disabling claim. Thus, his aggravation rights expired on December 2, 2013. Therefore, when claimant sought claim reopening in July 2015, the claim was within our Own Motion jurisdiction. ORS 656.278(1). The Own Motion claim was voluntarily reopened on August 4, 2015, and closed on April 7, 2016.

On February 9, 2016, the insurer disapproved Dr. Keiper's surgery request. (Ex. 10). That same date, the insurer accepted a "post-aggravation rights" new/omitted medical condition ("C5-6 disk herniation combined with a non-compensable, pre-existing disk degeneration, an arthritic condition"). (Ex. 11).

On February 10, 2016, the insurer denied the aforementioned combined condition, contending that the otherwise compensable condition was no longer the major contributing cause of claimant's disability and need for treatment. (Ex. 12). Claimant requested a hearing regarding this denial. (Ex. 14).

On March 18, 2016, Dr. Keiper agreed with Dr. Bergquist's February 2016 report "in its entirety." (Ex. 13-1).

An April 7, 2016 Own Motion Notice of Closure declared claimant's C5-6 disc herniation condition medically stationary as of February 4, 2016, and did not award additional temporary disability or PPD benefits. (Ex. 15). Claimant requested review of that closure.

On June 8, 2016, claimant withdrew his hearing request. (Ex. 16). On June 9, 2016, an Order of Dismissal issued. (Ex. 17).

CONCLUSIONS OF LAW AND OPINION

Premature Closure

Claimant contends that the Own Motion Notice of Closure was premature because his new/omitted medical condition (C5-6 disc herniation) was not medically stationary. For the following reasons, we disagree.

Under ORS 656.278(6) and OAR 438-012-0055, the propriety of the closure depends on whether claimant's accepted conditions were medically stationary at the time of the April 7, 2016 Own Motion Notice of Closure, considering the condition at that time. *See* ORS 656.268(1); *Sullivan v. Argonaut Ins. Co.*, 73 Or App 694 (1985); *Arvin D. Lal*, 55 Van Natta 816, 823 (2003) (an Own Motion claim closure pertains to those conditions for which the claim was reopened). A claim may not be closed unless the claimant's condition is medically stationary. *See* OAR 438-012-0055(1).

"Medically stationary" means that no further material improvement would reasonably be expected from medical treatment or the passage of time. ORS 656.005(17). The term "medically stationary" does not mean that there is no

longer a need for continuing medical care. *Maarefi v. SAIF*, 69 Or App 527, 531 (1984); *Pennie Rickerd-Puckett*, 61 Van Natta 336 (2009). The issue of claimant's medically stationary status is primarily a medical question to be decided based on competent medical evidence, not limited to the opinion of the attending physician. *Harmon v. SAIF*, 54 Or App 121, 125 (1981); *Michael J. Oliver*, 63 Van Natta 728, 730 (2011).

Here, on February 4, 2016, Dr. Bergquist, examining neurosurgeon, opined that claimant's C5-6 disc herniation condition was medically stationary. (Ex. 9-9). Dr. Keiper, consulting neurosurgeon, concurred with Bergquist's report.² (Ex. 13-1). There is no contrary opinion.

Therefore, based on the uncontroverted medical evidence, we find that claimant's C5-6 disc herniation condition (the only condition for which claimant's Own Motion claim was reopened) was medically stationary at the time of the April 2016 claim closure; *i.e.*, no further material improvement would reasonably be expected from medical treatment or the passage of time. *See* OAR 656.005(17). (Exs. 9-9, 13-1). Consequently, we conclude that the closure notice was not premature.³

² There is no indication that Dr. Keiper intended to pursue the surgery that he had previously recommended.

³ In reaching this conclusion, we acknowledge that the insurer has accepted another "post-aggravation rights" new/omitted medical condition (C5-6 disk herniation combined with a non-compensable, pre-existing disk degeneration, an arthritic condition). (Ex. 11). Nevertheless, this acceptance has no effect on our review of the April 7, 2016 Own Motion Notice of Closure, which is limited to the "medically stationary" status of the "post-aggravation rights" new/omitted medical condition (C5-6 disc herniation) for which the Own Motion claim was voluntarily reopened. *See Cheryl A. Blanchard*, 58 Van Natta 2663, 2666 (2006) (closure of an Own Motion claim is limited to those conditions for which the claim has been reopened, either voluntarily by the carrier or by an Own Motion order); *Harry M. Miller*, 56 Van Natta 2957, 2959 (2004) (accepted "post-aggravation rights" new/omitted medical condition that had not been "reopened" prior to claim closure not considered in determining medically stationary status; carrier remained responsible for processing that new/omitted medical condition new/omitted medical condition); *Ginney E. Etherton*, 55 Van Natta 2216 (2003).

The insurer remains responsible for processing claimant's Own Motion claim regarding the other accepted "post-aggravation rights" new/omitted medical condition; *i.e.*, C5-6 disk herniation combined with a non-compensable, pre-existing disk degeneration, an arthritic condition. In this regard, notwithstanding its subsequent "combined condition" denial of that previously accepted new/omitted medical condition, the insurer must either voluntarily reopen or submit a recommendation for the reopening of claimant's Own Motion claim for that accepted "post-aggravation rights" new/omitted medical condition. When claimant's conditions are medically stationary and there is sufficient information to determine permanent disability for that condition, the insurer shall close the claim pursuant to OAR 438-012-0055, including the payment of permanent disability compensation, if any,

Medical Arbiter

Because claimant also requested review of the Own Motion Notice of Closure based on his disagreement with the impairment findings used to rate his disability, and seeks the appointment of a medical arbiter, consistent with the procedures set forth in *Miranda*, we postpone our review of the Own Motion claim closure pending receipt of a medical arbiter's report. See *John S. Ross*, 56 Van Natta 3369 (2004); *Edward A. Miranda*, 55 Van Natta 784 (2003).

We also refer the claim to the Director to appoint a medical arbiter. The parties shall provide the Director with whatever information the Director deems necessary to assist the medical arbiter, including identification of the accepted "post-aggravation rights" new/omitted medical condition (C5-6 disc herniation), the only condition for which claimant is presently entitled to a rating of permanent disability benefits under ORS 656.278(1)(b) and ORS 656.278(2)(d).⁴

Following completion of the medical arbiter process, and the Board's receipt of a copy of the medical arbiter report, a supplemental briefing schedule will be implemented to allow the parties an opportunity to address the effect, if any, the arbiter's report has on claimant's request for review of the closure notice. After completion of that schedule, we will proceed with our review.

IT IS SO ORDERED.

Entered at Salem, Oregon on August 26, 2016

determined to be due under ORS 656.278(1)(b) and (2)(d) for the new/omitted medical condition. If claimant disagrees with that subsequent claim closure, he may request Board review. See *Kevin J. Schmidt*, 62 Van Natta 375, *recons*, 62 Van Natta 598, *recons*, 62 Van Natta 949 (2010) (the issuance of a "combined condition" denial does not obviate the carrier's obligation to process the claim to closure, nor does it prevent the claimant from requesting review of the closure and obtaining the appointment of a medical arbiter to evaluate the "post-aggravation rights" new/omitted medical condition for which the Own Motion claim was reopened).

⁴ The Appellate Review Unit (ARU) is requested to provide the Board with a copy of the entire written record (including any cover letter or questions to the arbiter from ARU) that it forwards to the medical arbiter.