
In the Matter of the Compensation of
SANDRA D. EVANS, Claimant
Own Motion No. 16-00012OM
OWN MOTION ORDER REVIEWING CARRIER CLOSURE
Peter O Hansen, Claimant Attorneys
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Reviewing Panel: Members Weddell and Curey.

Claimant requests review of the January 19, 2016 Notice of Closure that found her left knee post-traumatic arthritis condition medically stationary as of December 7, 2015.¹ On review, claimant contends that claim closure was premature. Based on the following reasoning, we affirm the closure notice.

FINDINGS OF FACT

On September 12, 1983, claimant sustained a compensable left knee injury. The insurer accepted a left knee dislocation.² Claimant underwent a partial meniscectomy. (Exs. 67-2, 71-2). Her aggravation rights have expired.

In February 2015, claimant began treating with Dr. Ulmer, her attending physician, for left knee pain and underwent a corticosteroid injection. (Exs. 47, 50).

In July 2015, claimant requested acceptance of a “post-aggravation rights” new/omitted medical condition (left knee post-traumatic arthritis). (Ex. 61).

In November 2015, Dr. Ulmer agreed that the “plan was to keep [claimant] going as long as possible before a knee replacement.” (Ex. 65-3).

¹ Claimant’s September 12, 1983 claim was accepted as a disabling claim and was first closed on February 21, 1984. Thus, claimant’s aggravation rights expired on February 21, 1989. Therefore, when claimant sought claim reopening in July 2015, the claim was within our Own Motion jurisdiction. ORS 656.278(1). On January 12, 2016, the insurer voluntarily reopened claimant’s Own Motion claim for a “post-aggravation rights” new/omitted medical condition (left knee post-traumatic arthritis). ORS 656.278(1)(b), (5). On January 19, 2016, the insurer issued its Notice of Closure.

² The at-injury employer was insured by an insurer that subsequently became insolvent. Thereafter, Oregon Insurance Guaranty Association (OIGA) became responsible for the covered claims of that insolvent insurer. Under these circumstances, we identify the carrier as “the insurer.” The insurer represents, and claimant does not dispute, that the claim was previously accepted for “left knee dislocation.” (Ex. 69).

On December 7, 2015, Dr. Baldwin, examining physician, opined that claimant's left knee condition was medically stationary. (Ex. 67-29).

On January 5, 2016, Dr. Ulmer concurred with Dr. Baldwin's December 2015 report. (Ex. 68).

On January 12, 2016, the insurer reopened claimant's Own Motion claim for a "post-aggravation rights" new/omitted medical condition (left knee post-traumatic arthritis). (Ex. 70). A January 19, 2016 Notice of Closure declared her left knee condition medically stationary as of December 7, 2015.

CONCLUSIONS OF LAW AND OPINION

On review, claimant asserts that, because she is in need of total knee replacement surgery, her left knee condition is not medically stationary. Therefore, she contends that the January 2016 Notice of Closure was premature and should be set aside. Based on the following reasoning, 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 January 19, 2016 Notice of Closure, considering the condition at that time. *See* ORS 656.268(1); *Sullivan v. Argonaut Ins. Co.*, 73 Or App 694 (1985); *Wesley W. Bittner*, 66 Van Natta 2037, 2039 (2014). "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 December 7, 2015, Dr. Baldwin, examining physician, opined that claimant's left knee condition was medically stationary. (Ex. 67-29). Dr. Ulmer, claimant's attending physician, concurred with Dr. Baldwin's report. (Ex. 68). There is no contrary opinion.

Although claimant contends that she is in need of total knee replacement surgery, the medical record does not indicate that such surgery is currently

recommended. Instead, in November 2015, Dr. Ulmer agreed that the “plan was to keep [claimant] going as long as possible before a knee replacement.” (Ex. 65-3).

Therefore, based on the uncontroverted medical evidence, we find that claimant’s left knee condition was medically stationary at the time of the January 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. 67-29, 68). Consequently, we conclude that the closure notice was not premature. Accordingly, we affirm the January 12, 2016 Notice of Closure.

IT IS SO ORDERED.

Entered at Salem, Oregon on June 1, 2016