
In the Matter of the Compensation of
DAN W. FIELDER, Claimant
WCB Case No. 15-03205
ORDER ON REVIEW
Moore Jensen, Claimant Attorneys
Gress & Clark LLC, Defense Attorneys

Reviewing Panel: Members Johnson and Lanning.

Claimant requests review of Administrative Law Judge (ALJ) Donnelly's order that: (1) found that his claim was not prematurely closed; and (2) affirmed an Order on Reconsideration that did not award permanent impairment for his left hand condition. On review, the issues are premature closure and extent of permanent disability (permanent impairment).¹

We adopt and affirm the ALJ's order with the following supplementation.

On September 25, 2014, claimant struck his wrist with a hammer at work. (Ex. 12). Before his injury, he had received medical treatment for bilateral carpal tunnel syndrome, including a left carpal tunnel release. (Exs. 1-11).

In January 2015, claimant was evaluated by Dr. Button at the self-insured employer's request. (Ex. 20). Dr. Button attributed a left palm contusion to the work-related injury incident, and opined that the contusion was medically stationary without permanent impairment. (Ex. 20-7).

On January 20, 2015, the employer accepted a left palm contusion. (Ex. 24).

In February 2015, claimant's attending physician, Dr. Abraham, concurred with Dr. Button's report. (Ex. 29).

¹ The self-insured employer moves to strike claimant's reply brief as untimely filed. Claimant acknowledges that, due to a docketing error, his reply brief was untimely filed. Asserting that this error constitutes extraordinary circumstances, he asks that the reply brief be considered in our review. Yet, in light of the employer's objection, claimant's explanation does not constitute extraordinary circumstances beyond his control. *See Johanna M. Cobarrubia*, 64 Van Natta 731, 733 (2012) (in light of the carrier's objection, a clerical error did not constitute extraordinary circumstances for extension of the briefing schedule). Consequently, the motion to strike is granted.

On February 18, 2015, a Notice of Closure did not award permanent impairment. (Ex. 30). Claimant requested reconsideration.

In May 2015, Dr. Harris performed a medical arborer examination. (Ex. 36). He noted some asymmetry in range of motion (ROM) of the index finger of the left hand, as compared to the right, and attributed 50 percent of the reduced ROM to the accepted left palm contusion and 50 percent to claimant's prior left carpal tunnel release.

In June 2015, an Order on Reconsideration affirmed the Notice of Closure. (Ex. 37).² Claimant requested a hearing, seeking rescission of the Notice of Closure, or alternatively, a permanent impairment award.

The ALJ determined that the claim was not prematurely closed, and that no medical opinion related Dr. Harris's findings to the accepted left palm contusion. Therefore, the ALJ concluded that there was no permanent impairment related to the accepted condition and affirmed the Order on Reconsideration.

On review, referring to *Magana-Marquez v. SAIF*, 276 Or App 32, 34 n 2 (2016), and *Brown v. SAIF*, 262 Or App 640, *rev allowed*, 356 Or 397 (2014), claimant contends that his work-related injury incident, rather than his accepted condition, must be considered in closing the claim and rating permanent impairment. Based on the following reasoning, we affirm.

A claim may be closed when the claimant's condition is medically stationary and there is sufficient information to determine the extent of permanent disability. ORS 656.268(1)(a); OAR 436-030-0020(1)(a). "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 there is no longer a need for continuing medical care. *Maarefi v. SAIF*, 69 Or App 527, 531 (1984); *Pennie Richerd-Puckett*, 61 Van Natta 336 (2009).

When determining whether claim closure was premature, we consider the medically stationary status of only the conditions accepted at the time of claim closure and any direct medical sequelae of those conditions. *See* ORS

² According to the Order on Reconsideration, claimant's reduced range of motion in the index finger converts to zero percent whole person impairment. (Ex. 37-3). Claimant does not contest this aspect of the reconsideration order on review.

656.268(15); OAR 436-035-0005(6) (defining direct medical sequelae);³ *Manley v. SAIF*, 181 Or App 431, 438 (2002) (accepted conditions and direct medical sequelae must be medically stationary at claim closure); *Katherine A. Lapraim*, 68 Van Natta 39, 41 (2016).

Claimant contends that his carpal tunnel syndrome and a median nerve contusion were caused by his work injury and must be medically stationary before claim closure and, when the claim is closed, must be rated by the Notice of Closure as part of his compensable work injury incident under *Brown*. However, we have previously declined to extend the *Brown* rationale in the context of premature closure disputes. See, e.g., *Tiffany C. Rohde*, 68 Van Natta 235, 236 (2016); *Lapraim*, 68 Van Natta at 41. Because claimant's accepted condition is a left palm contusion, and not carpal tunnel syndrome or a median nerve contusion, the record establishes that claimant's accepted condition and any direct medical sequelae of the accepted condition are medically stationary. Therefore, the Notice of Closure was not premature.

In addition, citing *Magana-Marquez*, claimant seeks a permanent impairment award based on sensation loss of the left second and third fingers. In doing so, he refers to Dr. Harris's medical arbiter report. (Ex. 36-3, -6). However, Dr. Harris does not attribute this sensation loss to the accepted left palm contusion condition or its direct medical sequelae.

Here, the record does not establish that claimant sustained any permanent impairment due to his accepted left palm contusion condition. See *Stuart C. Yekel*, 67 Van Natta 1279, 1284 (2015) (finding that "statutory and administrative authority make clear that impairment is awarded based on the accepted conditions and the direct medical sequelae of the accepted conditions"). Consequently, claimant is not presently entitled to a permanent disability award for such conditions.⁴

³ Claimant's claim was closed by a February 18, 2015 Notice of Closure. Thus, the applicable rules are found in WCD Admin. Orders 11-058 (eff. January 1, 2012) and 12-061 (eff. January 1, 2013).

⁴ Finally, we have previously determined that adhering to our holding in *Yekel* is the most administratively judicious approach, notwithstanding the court's footnote in *Magana-Marquez*, 276 Or App at 34 n 2. See *William Snyder*, 68 Van Natta 199, 200 n 1 (2016). Moreover, a claimant who contends that the compensable conditions to be rated extend beyond those reflected in the Notice of Acceptance may object to the acceptance notice or initiate claims for new/omitted medical conditions at any time. See ORS 656.262(6)(d); ORS 656.267(1). If new/omitted conditions are found compensable, the claim must be reopened and processed to closure, at which time the record will be further developed for the rating of impairment for those subsequently claimed/accepted conditions. See ORS 656.262(7)(c); *Jonathan E. Ayers*, 56 Van Natta 1470, 1471 (2004).

Accordingly, we affirm the ALJ's determination that claimant is not entitled to a permanent impairment award for his accepted left palm contusion condition.

ORDER

The ALJ's order dated December 30, 2015 is affirmed.

Entered at Salem, Oregon on May 25, 2016

Member Lanning specially concurring

For the reasons expressed in my dissenting opinion in *Stuart C. Yekel*, 67 Van Natta 1279 (2015) (Members Lanning and Weddell dissenting), I do not agree that the rating of permanent impairment is limited to the accepted conditions rather than the compensable work-related injury. However, under the principles of *stare decisis*, I follow the holding of *Yekel* and concur with the outcome in this case.