

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

In the Matter of the Compensation of  
Michael DeRoest, Claimant.

Michael DeROEST,  
*Petitioner,*

*v.*

KEYSTONE RV COMPANY,  
*Respondent.*

Workers' Compensation Board  
1201220; A156118

Argued and submitted September 17, 2015.

Gerald C. Doble argued the cause for petitioner. With him on the briefs was Doble & Associates, PC.

Rebecca A. Watkins argued the cause for respondent. With her on the brief was Lance M. Johnson and Sather, Byerly & Halloway, LLP.

Before DeVore, Presiding Judge, and Flynn, Judge, and Schuman, Senior Judge.

PER CURIAM

Affirmed.

**PER CURIAM**

Claimant, who previously suffered a compensable work-related injury to his left foot, seeks review of an order of the Workers' Compensation Board, which concluded that claimant failed to prove he suffered a compensable aggravation of that injury. The board upheld employer's denial of the aggravation claim because it concluded that claimant did not prove an actual worsening of the accepted condition—"left cuboid fracture." On judicial review, claimant challenges the board's conclusion that the "actual worsening" requirement of the aggravation statute, ORS 656.273, focuses only on conditions previously identified in a notice of acceptance. We recently agreed with the board's construction of ORS 656.273, holding that "an aggravation, under ORS 656.273, may only occur upon a condition identified in a notice of acceptance." *Nacoste v. Halton Co.*, 275 Or App 600, 607, \_\_\_ P3d \_\_\_ (2015). Accordingly, we affirm the board's decision in this case.<sup>1</sup>

Affirmed.

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<sup>1</sup> We reject without written discussion claimant's challenge to the board's refusal to award a penalty and attorney fee for conduct by employer that a dissenting board member viewed as a "discovery violation."