



## Practical Tips For Own Motion Claims: *the ones older than you are!*

By Kelly Niemeyer and Vincci Lam • August 13, 2014

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When approaching a claim, check to see if the date of injury is more than five years ago. If so, the claim may have entered “Own Motion” status, which changes processing of the claim and changes the types of benefits available to the worker. Our tips highlight the important considerations for an Own Motion claim and when to take advantage of reimbursement opportunities.

Does the claim qualify as Own Motion? The five-year clock for Own Motion status starts at different times.

- If the claim was accepted as *non-disabling* and remained classified as non-disabling for one year after the initial acceptance, the claim enters Own Motion status five years *after the date of injury*.
- If the claim was accepted as *disabling*, or was reclassified to disabling within one year of the initial acceptance, the claim enters Own Motion status five years *after the first Notice of Closure*.

Analyze whether the Own Motion claim is “determined to be compensable.”

- Does an investigation reveal the new/omitted condition at issue is sufficiently related to the injury or that there has been a worsening of an accepted condition? Or, was there an Order setting aside the prior denial of the worsened condition or new/omitted condition? If yes, the claim has been “determined to be compensable” and a Modified Notice of Acceptance (MNOA) is appropriate.
- If the new/omitted condition or worsened condition is not determined to be compensable, issue a “traditional” denial as with any other claim.

Once the claim is “determined to be compensable” and a MNOA is issued, the next analysis is whether the claim qualifies for reopening in Own Motion. This Own Motion processing must be completed within 30 days. Failure to do so exposes a carrier/employer to penalties under ORS 656.262(1)(a) for unreasonable claim processing.

- In an Own Motion “worsened condition” claim, the worker must meet additional “work force” requirements under ORS 656.278(1)(a) to qualify for reopening. These additional requirements create scenarios in which the worker’s condition may have worsened and requires medical

*Continued*

***The five-year clock for Own Motion status starts at different times. We can review a potential Own Motion claim and help you determine a course of action.***



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## Practical Tips for Own Motion Claims (con't)

treatment (so the treatment is payable), but the carrier would NOT reopen the claim in Own Motion (meaning no temporary disability is due) because the worker is not in the work force at the time of worsening.

- If the claim does not qualify for reopening, the carrier or employer must submit a "Carrier's Own Motion Recommendation" to the Oregon Workers' Compensation Board (Form 440-2806), recommending against Own Motion reopening.
- If the claim qualifies for reopening, submit Form 3501 (Voluntarily Reopening) to the Workers' Compensation Division.
- The additional "work force" requirements under ORS 656.278(1)(a) do not apply to Own Motion "new/omitted condition" claims. If the "new/omitted condition" claim was determined to be compensable, simply issue a MNOA accepting the new/omitted condition, then submit Form 3501 (Voluntarily Reopening) to the Division. The Form 3501 serves as notice to the Division and the Board that the employer/carrier is voluntarily reopening the claim.

Closure of an Own Motion claim reopened for a worsened condition or new/omitted condition is accomplished via Form 2066. A worker can challenge the Own Motion Closure by appealing to the Board.

**The good news:** Any indemnity benefits (temporary disability and permanent disability) paid on Own Motion claims is eligible for reimbursement by the Division's Reopened Claims Program (RCP).

**More good news:** The following benefits are not available in Own Motion claims:

- Vocational Services
- Permanent Partial Disability (PPD) benefits for a "worsened condition" claim. (This makes sense because the PPD awarded at the first closure is meant to compensate the worker for any future waxing and waning of the accepted conditions.)
- PPD benefits are available for a "new/omitted condition."

The unavailability of PPD benefits in worsened condition claims is important to remember. Any benefits erroneously paid to the worker will not be reimbursed by RCP.

**And even more good news:** The RCP may contribute funds toward securing a Claim Disposition Agreement (CDA) in order to reduce indemnity benefits that are eligible for reimbursement (i.e. temporary disability benefits and permanent disability benefits). Note that contribution from the RCP towards a CDA for indemnity benefits would likely require the acceptance of a new/omitted condition by the carrier. ■

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<sup>1</sup> The Oregon Workers' Compensation Board provides more information, including an Own Motion process flowchart online at: <http://www.cbs.state.or.us/wcb/ominfo/ominfo.htm>; relevant forms may also be found online at [http://www.cbs.state.or.us/external/wcd/policy/bulletins/forms\\_cat.html](http://www.cbs.state.or.us/external/wcd/policy/bulletins/forms_cat.html).