# Carrier's Own Motion Recommendation

## Notice to Claimant

The Workers' Compensation Board will review this recommendation. Copies of all evidence considered by the carrier will be sent to the Board and to you. **If you disagree with the carrier's recommendation(s), it is recommended that you obtain an attorney. You may have an attorney of your choice, whose fee will be limited to a percentage of any additional compensation you may receive.** In addition, you may contact the Ombuds Office for Oregon Workers, whose job it is to assist injured workers about workers' compensation matters: Ombuds Office for Oregon Workers, P.O Box 14480, Salem, OR 97309-0405. Phone (503) 378-3351 or 1-800-927-1271 (V/TTY) (within the State of Oregon).

**You may submit your written position and additional written materials. That material should be sent to the Board within 14 days after your receipt of this recommendation form. The Board's mailing address is: Own Motion Unit, Workers' Compensation Board, 2601 25th St. SE Ste. 150, Salem, OR 97302-1280.**

If you send the Board additional material, please include a cover letter listing the carrier's claim number, WCD file number, and date of injury identified at items A-9, A-10, and A-11 on page 3 of this form. **You should also send a copy of any material you submit to the Board to the carrier at the address given at item A-3 on page 2 of this form.**

**NOTE: (1) If your Own Motion claim is based on a worsening of your compensable injury, the claim is eligible to be reopened only if there is a worsening of your compensable injury that: (1) results in a partial or total inability for you to work; (2) requires hospitalization or inpatient or outpatient surgery, or other curative treatment prescribed in lieu of hospitalization that is necessary to enable you to return to work; *and* (3) you are in the work force at the time of disability. [If the carrier contends that you were not in the work force at the time of disability, see Section E on page 5 of this form, which explains the work force requirements].**

**If all of these requirements are satisfied, the claim qualifies for reopening. Benefits on a reopened "worsened condition" claim may include temporary disability compensation from the time your attending physician authorizes temporary disability compensation for the hospitalization, surgery or other curative treatment until your condition becomes medically stationary.**

**(2) If your Own Motion claim is based on a new or omitted medical condition, it is eligible to be reopened. However, if the carrier appeals an Administrative Law Judge's order finding the new or omitted medical condition compensable, the decision regarding claim reopening will be delayed until the Board decides the compensability issue.**

**Benefits on a reopened new or omitted medical condition claim may include: (a) temporary disability compensation from the time your attending physician authorizes temporary disability compensation for the hospitalization, surgery or other curative treatment until your condition becomes medically stationary; and (b) permanent disability benefits at closure of the claim.**

If you need further assistance in this matter, please contact the Own Motion Coordinator at (503) 934-0113 or 1-877-311-8061 (within the State of Oregon).

## Instructions to the Carrier

The carrier must process as a request for Own Motion relief under ORS 656.278 any claim that reasonably notifies it of: (1) a "worsened condition" that has been determined to be compensable as defined under OAR 438-012-0001(3), which is filed after the expiration of aggravation rights under ORS 656.273(4) (OAR 438-012-0020(3), (5)(c), (5)(d), OAR 438-012-0030(1)); (2) a new or omitted medical condition(s) that has been determined to be compensable as defined under OAR 438-012-0001(4), which is filed after the expiration of aggravation rights under ORS 656.273(4) (OAR 438-012-0020(4), (6), OAR 438-012-0030(1)); and/or (3) medical services where the date of injury is before January 1, 1966 (OAR 438-012-0020(5)(a), (b), OAR 438-012-0030(2)). Claims for medical services where the date of injury is on or after January 1, 1966 must be processed under ORS 656.245.

**The carrier is not required to submit a written recommendation to the Board <u>if</u> it voluntarily reopens the claim under ORS 656.278(5) to provide benefits allowable under ORS 656.278.** In addition, pursuant to ORS 656.625, a carrier's voluntary claim reopening under ORS 656.278 qualifies the carrier for reimbursement from the Reopened Claims Program. However, if the carrier voluntarily reopens the claim under ORS 656.278(5), it must submit a Form 3501 to the Workers' Compensation Division (WCD), with copies to claimant and claimant's attorney (if any).

For "worsened condition" claims that have been determined to be compensable as defined under OAR 438-012-0001(3) and "post-aggravation rights" new or omitted medical condition claims that have been determined to be compensable as defined under OAR 438-012-0001(4), the carrier must, within 30 days after the claimed condition has been determined to be compensable as defined under OAR 438-012-0001(3) or OAR 438-012-0001(4), either: (1) voluntarily reopen the claim (Form 3501); or (2) submit its written recommendation, with supporting documentation, to the Board at the address given above. OAR 438-012-0030(1).

If the carrier chooses not to voluntarily reopen the claim, it must send claimant and claimant's attorney, if any, a copy of its completed Carrier's Own Motion Recommendation, including copies of any material it submits with that form. The carrier must provide documentary evidence that copies of the written recommendation and attachments were forwarded to claimant and claimant's attorney, if any.

The carrier may reproduce the "Carrier's Own Motion Recommendation" form as a word-processing document only if the product exactly reproduces all of the data fields and text on the Board's document (Form 440-2806, eff. 01/01/2006).

**The carrier must submit legible copies of all documents that are relevant and material to the matters in dispute, together with an index. These documents shall include copies of all relevant medical reports concerning hospitalization, surgery, or other curative treatment prescribed in lieu of hospitalization that is necessary to enable claimant to return to work. These documents shall be arranged in chronological order and numbered in the lower right corner of each page, beginning with the document of earliest date, and preceded by the designation "Ex." Pagination of multiple page documents shall be designated by a hyphen followed by the page number; *e.g.*, page 2 of document 3 shall be designated "Ex. 3-2." The index shall include the document numbers, description of each document, author, number of pages, and date of the document. OAR 438-012-0030(1)(b).**

**Failure of the carrier to comply with the Board's Own Motion rules, if found unreasonable or unjustified, may result in the imposition of penalties and attorney fees pursuant to ORS 656.262(11) and OAR 438-015-0110. OAR 438-012-0110.**

**<u>SECTION A: CLAIM INFORMATION</u> (Questions A-1 through A-18).**

| **CARRIER INFORMATION.** |
|---|
| A-1. Carrier: |
| A-2: Claims Examiner: |
| A-3. Carrier Mailing Address and Phone Number: |
| A-4. Date Recommendation Form Mailed: |

| **CLAIMANT INFORMATION.** | |
|---|---|
| A-5. Claimant's Name (First, MI, Last): | |
| A-6: Claimant's Complete Current Address: | |
| A-7. Claimant's Attorney **(If represented, submit a copy of the Retainer Agreement).** | |
| A-8. Claimant's Attorney's Address | |
| **CLAIM INFORMATION.** | |
| A-9. Carrier's Claim Number: | |
| A-10. WCD File Number: | |
| A-11. Date of Injury: | |
| A-12. Employer-at-Injury: Name and Address: | |
| A-13. Date the current claim was received by carrier **(Submit a date-stamped copy of the written claim/request).** | Date: |
| A-14. Date of the first claim closure | Date: |
| A-15. Date aggravation rights expired | Date: |
| A-16. Date of last closure pursuant to ORS 656.268 | Date: |
| **A copy of the <u>first</u> Determination Order or Notice of Closure shall be submitted. If the claim was first accepted as a "nondisabling claim," a copy of the Notice of Acceptance shall be submitted. A copy of the <u>last</u> Determination Order or Notice of Closure issued pursuant to ORS 656.268 shall also be submitted.** | |
| A-17. Conditions accepted prior to current request for Own Motion relief. (List below). | |
| a. Condition: | Date Accepted: |
| b. Condition: | Date Accepted: |
| c. Condition: | Date Accepted: |
| A-18. Conditions "determined to be compensable" under OAR 438-012-0001(3) and/or (4). (List below). | |
| a. "Post-Aggravation Rights" Worsened Condition OAR 438-012-0001(3): | Date "Determined to be Compensable" under OAR 438-012-0001(3) **(If the compensability decision was made by a litigation order, attach a copy of that litigation order)**: |
| b. "Post-aggravation Rights" New or Omitted Medical Condition OAR 438-012-0001(4): | Date "Determined to be Compensable" under OAR 438-012-0001(4) **(Attach a copy of the Modified Notice of Acceptance and/or litigation order)**: |

**SECTION B: "POST-AGGRAVATION RIGHTS" "WORSENED CONDITION" CLAIM THAT HAS BEEN DETERMINED TO BE COMPENSABLE.**
**(See page 2 for explanation of supporting documentation required).**

| Yes | No | |
|---|---|---|
| ☐ | ☐ | B-1: Has claimant submitted a claim related to an injury for a "worsened condition" claim that has been "determined to be compensable" as defined in OAR 438-012-0001(3)? (That is, the carrier does not dispute compensability of or responsibility for the claim or condition (has not issued a denial within the time period prescribed under ORS 656.262 or ORS 656.308(2)); or the claim or condition has been found compensable and the responsibility of the carrier by an order from an Administrative Law Judge, the Board, or the court). ORS 656.278(1)(a); OAR 438-012-0001(3); OAR 438-012-0020(3).<br>(If yes, complete all questions in Section B, then proceed to Section C).<br>(If no, proceed to Section C). |
| ☐ | ☐ | B-2: If the compensability/responsibility issue was decided by a litigation order, does the carrier contest that compensability/responsibility decision?<br>(Indicate "no" if there was no litigation order, or the carrier does not contest the litigation order). |
| ☐ | ☐ | B-3: Does claimant's current "worsened condition" result in a partial or total inability of claimant to work? ORS 656.278(1)(a). |
| ☐ | ☐ | B-4: Does claimant's current "worsened condition" require hospitalization or inpatient or outpatient surgery or other curative treatment prescribed in lieu of hospitalization that is necessary to enable claimant to return to work? ORS 656.278(1)(a). |
| ☐ | ☐ | B-5: The carrier agrees that claimant was in the work force at the time of disability.<br>**If no, attach an explanation for that position, with supporting material. Refer claimant to Section E, page 5.** |
| ☐ | ☐ | B-6 The carrier agrees that the hospitalization, surgery, or other curative treatment prescribed in lieu of hospitalization that is necessary to enable claimant to return to work is reasonable and necessary.<br>**If no, submit a copy of any request for Director review of medical treatment pursuant to ORS 656.245, ORS 656.260, and/or ORS 656.327.** |
| ☐ | ☐ | **B-7: RECOMMENDATION:**<br>Reopen "Worsened Condition" Claim.<br>(Indicate "yes" if the carrier recommends reopening the "worsened condition" claim). (Indicate "no" if the carrier recommends against reopening the claim). |

**SECTION C: "POST-AGGRAVATION RIGHTS" NEW AND/OR OMITTED MEDICAL CONDITION CLAIM THAT HAS BEEN DETERMINED TO BE COMPENSABLE.**
**(See page 2 for explanation of supporting documentation required).**

| Yes | No | |
|---|---|---|
| ☐ | ☐ | C-1: Has claimant submitted a "post-aggravation rights" claim related to an injury for a new medical condition or omitted medical condition that has been "determined to be compensable" as defined in OAR 438-012-0001(4)? (That is, the carrier has issued a notice of acceptance under ORS 656.262(7)(a); or the carrier's denial under ORS 656.262(7) or ORS 656.308(2) or *de facto* denial has been set aside by an order from an Administrative Law Judge, the Board, or the court). ORS 656.278(1)(b); OAR 438-012-0001(4); OAR 438-012-0020(4). |
| | | C-2: List the new/omitted medical condition(s) that has been "determined to be compensable:" |
| ☐ | ☐ | C-3: If the compensability/responsibility issue was decided by a litigation order, does the carrier contest that compensability/responsibility decision?<br>(Indicate "no" if there was no litigation order, or the carrier does not contest the litigation order). |
| ☐ | ☐ | **C-4: RECOMMENDATION:**<br>Reopen the "Post-Aggravation Rights" New/Omitted Condition Claim.<br>(Indicate "yes" if the carrier recommends reopening the "post-aggravation rights" new/omitted medical condition claim). (Indicate "no" if the carrier recommends against reopening the claim). |

**SECTION D: PRE-1966 INJURY – MEDICAL SERVICES CLAIMS.**

**Note: Address pre-1966 claims for "worsened conditions" and "post-aggravation rights" new or omitted medical conditions in Sections B & C, respectively. (See page 2 for explanation of supporting documentation required).**

| Yes | No | |
|---|---|---|
| ☐ | ☐ | D-1: Has claimant submitted a request for medical services for a work injury that occurred before 1966? ORS 656.278(1)(c); OAR 438-012-0020(5)(a), (b). |
| | | D-2: List medical services: |
| ☐ | ☐ | D-3: The carrier agrees that the requested medical services are compensably related to the accepted condition. |
| ☐ | ☐ | D-4: The carrier agrees that it is responsible for the requested medical services. |
| ☐ | ☐ | D-5: The carrier agrees that the requested medical services are reasonable and necessary for the accepted condition. |
| ☐ | ☐ | **D-6: RECOMMENDATION:** Reopen Pre-1966 Medical Services Claim. (Indicate "yes" if the carrier recommends reopening the pre-1966 medical services claim). (Indicate "no" if the carrier recommends against reopening the claim). |

**SECTION E: NOTICE TO CLAIMANT REGARDING WORK FORCE STATUS.**

If the carrier contends that you have withdrawn from the work force (answered "No" to Question B-5, page 4), and that is correct, then your "worsened condition" claim will not qualify for claim reopening. Please read the attached explanation of the carrier's position and supporting documents.

In order to qualify for reopening of a "worsened condition" claim, you must prove that you were in the work force at the time of disability as defined under the criteria in *Dawkins v. Pacific Motor Trucking*, 308 Or 254 (1989). Under that criteria, you are deemed to be in the work force if you meet any **one** of the following three criteria:

**I. You were engaged in employment.** To meet this requirement, please send to the Board (with copies to the carrier) copies of: 1) your tax records; 2) wage-withholding statements; 3) paycheck stubs; and/or 4) a letter from your employer verifying current employment. If you were self-employed or casually employed, please submit copies of bills and receipts relating to your business, or any documents which prove you were working during the relevant time period.

**II. Although not employed, you were willing to work and making reasonable efforts to obtain employment.** To meet this requirement, please send to the Board (with copies to the carrier) a sworn affidavit that you were willing to seek work and were seeking work, and a list of employers you contacted while looking for work, including names, addresses, phone numbers, and dates of contact. If you were receiving unemployment benefits, please send verification of these benefits.

**III. You were willing to work, but were not looking for work, because your compensable injury made it futile for you to obtain and perform any type of work for which you are qualified by age, education, and work experience.** To meet this requirement, please send to the Board (with copies to the carrier) a sworn affidavit that you were willing to work and would have sought work but for your compensable condition, and a *medical opinion* supporting this position (that is, a *doctor's opinion* explaining why your compensable injury makes it futile for you to obtain or perform work for which you are qualified).

**You should send this information to the Board within 14 days of your receipt of this form or the Board may deny reopening of your claim. Please submit this information to: Own Motion Unit, Workers' Compensation Board, 2601 25th St. SE Ste. 150, Salem OR 97302-1280.**

Include a cover letter with the carrier's claim number, WCD file number, and date of injury listed in items A-9, A-10, and A-11 on page 3 of the carrier's recommendation form. **You should also mail the carrier a copy of any information you submit to the Board.** The copy should be sent to the carrier at the address listed at item A-3 on page 2 of the carrier's recommendation form. Questions may be directed to the Own Motion Coordinator at (503) 934-0113 or 1-877-311-8061 (within the State of Oregon).