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In the Matter of the Compensation of  
**ROBERT H. CARRON, Claimant**  
Own Motion No. 04-0025M  
OWN MOTION ORDER REFERRING FOR CONSOLIDATED HEARING  
J Michael Casey, Claimant Attorneys  
Barbara Martz, Multnomah Co S-D #1, Insurance Carrier

Reviewing Panel: Members Lowell and Biehl.

The insurer has submitted a "Carrier's Own Motion Recommendation," indicating that claimant seeks reopening of his 1996 claim for a worsening of his previously accepted lumbar strain. The insurer recommends against reopening the claim, contending that: (1) claimant's current condition does not 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; (2) claimant's current condition is not causally related to the compensable condition; (3) the insurer is not responsible for claimant's current condition; and (4) claimant was not in the workforce at the time her injury worsened.

In addition, the insurer issued a denial of claimant's current condition on which claimant filed a request for hearing with the Hearings Division. (WCB Case No. 03-08740). A hearing is set before an Administrative Law Judge (ALJ) for March 3, 2004.

Pursuant to ORS 656.278(1)(a) (2001), there are three requirements for the reopening of an Own Motion claim for a worsening of a compensable injury. First, the worsening must result in a partial or total inability of the worker to work. *See James J. Kemp*, 54 Van Natta 491, 505 (2002). Second, the worsening must require hospitalization, surgery (either inpatient or outpatient), or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the worker to return to work. *Id.* Third, the worker must be in the "work force" at the time of disability as defined under the criteria in *Dawkins v. Pacific Motor Trucking*, 308 Or 254 (1989).<sup>1</sup> *Id.* If a claimant meets these

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<sup>1</sup> Pursuant to the Court's reasoning in *Dawkins*, a claimant is in the work force at the time of disability if he or she is: (1) engaged in regular gainful employment; or (2) not employed, but willing to work and is seeking work; or (3) not employed, but willing to work and is not seeking work because a work-related injury has made such efforts futile. *Dawkins*, 308 Or at 258.

The "date of disability" for the purpose of determining work force status for a worsened condition claim in Own Motion status is the date the claimant's claim worsened: (1) resulting in a partial or total inability to work; and (2) requiring (including a physician's recommendation for) hospitalization or inpatient or outpatient surgery, or other curative treatment prescribed in lieu of hospitalization that is

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requirements, his or her Own Motion claim qualifies for reopening either by the Board or the carrier.

Here, the insurer opposes the reopening of claimant's 1996 injury claim for the worsening of his previously accepted low back injury contending, among other issues, that: (1) claimant's compensable condition does not require any treatment that qualifies his claim for reopening; and (2) claimant was not in the work force.

Considering the complexity of issues arising from claimant's pending Own Motion claim and in light of the litigation pending before the Hearings Division, we conclude that it would be appropriate to consolidate the Own Motion matter with the pending litigation. At the hearing, the documentary and testimonial record can be further developed regarding the parties' contentions. The hearing may be conducted in any manner that the ALJ determines will achieve substantial justice.

Following the hearing, if the disputed claim is found to be causally related to the compensable injury, the ALJ shall issue a recommendation to the Board within 30 days. In that recommendation, the ALJ shall make findings of fact and conclusions of law regarding whether claimant's compensable condition qualifies for reopening under ORS 656.278(1)(a) (2001); *i.e.*, whether the worsening claim satisfies the "medical treatment" and "work force" requirements, discussed above.

Those findings and conclusions shall be contained in an unappealable recommendation, which the ALJ shall forward to the Board.<sup>2</sup> In addition, if the matter is resolved by stipulation, the ALJ is directed to submit a copy of the settlement document to the Board. After issuance of the recommendation (or settlement document), the parties should advise the Board of their respective positions regarding the Own Motion matters. Thereafter, the Board would proceed with its review.

IT IS SO ORDERED.

Entered at Salem, Oregon on February 10, 2004

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necessary to enable the injured worker to return to work. *Thurman M. Mitchell*, 54 Van Natta 2607 (2002).

<sup>2</sup> If the insurer subsequently issues a Form 3501, announcing that it is voluntarily reopening this currently disputed claim, the parties should notify the Board. In the event that the issuance of the voluntary claim reopening form comes to our attention, we will consider dismissal of this Own Motion matter. See *Jesse C. Day*, 55 Van Natta 2366, 2369-70 (2003).