
In the Matter of the Compensation of
EDWARD E. BUFORD, Claimant
Own Motion No. 03-0290M
OWN MOTION ORDER
Scott M McNutt Sr, Claimant Attorneys
Debra Ehrman, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

The SAIF Corporation has submitted claimant's request for claim reopening for his "worsening" claim for a previously accepted low back condition. *See* ORS 656.278(1)(a) (2001). Claimant's aggravation rights have expired. SAIF opposes the reopening of the claim, contending, among other issues, that he was not in the work force at the time of the current disability.

Following SAIF's Own Motion recommendation, claimant requested a hearing with the Hearings Division raising, among other issues, a *de facto* denial of an alleged "aggravation" claim. (WCB Case No. 03-05086). On September 3, 2003, we consolidated this Own Motion matter with the matters pending at the Hearings Division, and noted that the Administrative Law Judge (ALJ) could also address SAIF's work force contentions.

On December 26, 2003, ALJ Myzak issued an Opinion and Order that found that claimant had not perfected an aggravation claim. That order has not been appealed.

ALJ Myzak also issued an Own Motion Recommendation, concluding that claimant's previously accepted condition had "worsened," but that claimant had failed to establish that he was in the work force at the time of his disability.

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 an inability of the worker to work. *See James J. Kemp*, 54 Van Natta 491 (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).¹ *Id.* If a claimant meets these requirements, his or her Own Motion claim qualifies for reopening either by the Board or the carrier.

Here, claimant's "work force" status has been challenged. Thus, claimant must provide evidence, such as copies of paycheck stubs, income tax forms, unemployment compensation records, a list of employers where claimant looked for work and dates of contact, a letter from the prospective employer, or a letter from a doctor stating that a work search would be futile because of claimant's compensable condition for the period in question. *Stuart T. Valley*, 55 Van Natta 475 (2003). Where, as here, such evidence is absent from the record, we are unable to authorize claim reopening. ORS 656.278(1)(a) (2001); *Stuart T. Valley*, 55 Van Natta at 478-79; *James J. Kemp*, 54 Van Natta at 502-503.²

Accordingly, the request for reopening of claimant's "worsening" claim is denied.³

IT IS SO ORDERED.

Entered at Salem, Oregon on May 6, 2004

¹ 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.

² SAIF responded to ALJ Myzak's Own Motion Recommendation arguing that not only had claimant failed to establish he was in the work force, but he also failed to meet the statutory criteria to establish a worsening under ORS 656.278(1)(a) (2001). In this particular case, these matters need not be addressed because even if the "worsening" issues were found in claimant's favor, the record would still be insufficient to support a claim reopening under ORS 656.278(1)(a) (2001) because of the "work force" deficiency.

³ If a party obtains evidence that addresses the "work force" component of the statutory standard that is lacking from the current record, that party may request reconsideration of our decision. However, because our authority to reconsider this decision expires within 30 days after the mailing date of the Own Motion Order, the reconsideration request must be filed within that 30-day period. OAR 438-012-0065(2).