

In the Matter of the Compensation of  
**FRED L. VANARNAM, Claimant**  
Own Motion No. 04-0362M  
OWN MOTION ORDER  
Unrepresented Claimant  
SAIF Corporation, Insurance Carrier

Reviewing Panel: Members Kasubhai and Lowell.

The SAIF Corporation has submitted claimant's request to reopen his claim for a worsening of his accepted left knee claim (left knee bucket handle tear of the lateral meniscus). ORS 656.278(1)(a) (2001). Claimant's aggravation rights have expired. SAIF opposed reopening, contending that claimant was not in the work force. Based on the following reasoning, we find that claimant's claim does not qualify for reopening.

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). *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 must satisfy the first requirement for reopening his Own Motion claim for a worsening of his compensable left knee condition; *i.e.*, whether claimant's compensable left knee condition worsened resulting *in a partial or total inability to work*. *Redeena M. Monroe*, 55 Van Natta 3730 (2003).

The medical evidence does not satisfy this statutory requirement. Rather, on July 13, 2004, Dr. Irvine, claimant's attending physician, recommended an arthroscopic lateral meniscectomy. (Ex. 7). On September 13, 2004, SAIF authorized the surgery. (Ex. 10). Thus, no portion of the record addresses whether claimant's worsening (which requires surgery) resulted in a total or partial inability to work. The resolution of the inability to work issue is a medical question that must be addressed by medical evidence. In other words, we cannot infer that a worsening (or a particular medical treatment) will result in an inability to work.

*SAIF v. Calder*, 157 Or App 224, 227-28 (1998) (“[t]he Board is not an agency with specialized medical expertise entitled to take official notice of technical facts within its specialized knowledge”). Instead, the record must include medical evidence that claimant’s compensable left knee condition worsened resulting in an inability to work. ORS 656.278(1)(a) (2001).

Under these circumstances, we conclude that this Own Motion claim for a worsened compensable left knee condition does not satisfy the inability to work criteria required under ORS 656.278(1)(a) (2001).<sup>1</sup> Accordingly, we are not authorized to reopen this Own Motion claim for a worsening of claimant’s previously accepted condition (left knee bucket handle tear of the lateral meniscus).<sup>2 3</sup>

IT IS SO ORDERED.

Entered at Salem, Oregon on November 17, 2004

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<sup>1</sup> In light of our conclusion, we need not address SAIF’s work force contentions. In this particular case, this matter need not be addressed because even if the work force issue was found in claimant’s favor, the record would still be insufficient to support a claim reopening under ORS 656.278(1)(a) (2001).

<sup>2</sup> If a party obtains further medical evidence that addresses the “inability to work” component of the statutory standard, 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).

<sup>3</sup> Finally, inasmuch as claimant is unrepresented, he may wish to consult the Workers’ Compensation Ombudsman, whose job it is to assist injured workers in such matters. He may contact the Workers’ Compensation Ombudsman, free of charge, at 1-800-927-1271, or write to:

WORKERS’ COMPENSATION OMBUDSMAN  
DEPT OF CONSUMER & BUSINESS SERVICES  
PO BOX 14480  
SALEM, OR 97309-0405