
In the Matter of the Compensation of
CLARENCE HAWELU, Claimant
Own Motion No. 04-0320M
OWN MOTION ORDER
Doblie & Associates, Claimant Attorneys
Special Districts Assoc Of Ore, Insurance Carrier

Reviewing Panel: Members Lowell and Kasubhai.

The self-insured employer has submitted claimant's request for claim reopening for his "worsening" claim for a previously accepted right knee condition. *See* ORS 656.278(1)(a) (2001). Claimant's aggravation rights have expired. The employer 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. Claimant has not responded to the employer's contention.

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

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.

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 4} Claimant's entitlement to medical expenses pursuant to ORS 656.245 is not affected by this order.

IT IS SO ORDERED.

Entered at Salem, Oregon on September 21, 2004

² In a May 13, 2004 chart note, Dr. Mohler, claimant's attending physician, notes that claimant is retired. Claimant submitted a work questionnaire, indicating that he is receiving social security benefits. Pursuant to *Dawkins*, "[a] claimant who is not employed, is not willing to be employed, or, although willing to be employed, is not making reasonable efforts to find employment (unless such efforts would be futile because of the work-related injury) has withdrawn from the work force." *Konnni Sprueill*, 45 Van Natta 541 (1993). A claimant's eligibility for social security benefits indicates that he is disabled from work due to one or a number of medical conditions. However, the provision of social security benefits does not automatically establish that a claimant is disabled from work because of a compensable injury. Therefore, a claimant's entitlement to social security benefits is not determinative evidence regarding whether he is disabled due to the compensable injury, unless the claimant can establish that the entitlement to disability benefits is due to the compensable condition. See *Kenneth C. Felton*, 48 Van Natta 725 (1996).

Here, the record merely indicates that claimant is receiving social security benefits. The record does not establish that claimant's entitlement to these benefits is due to the compensable condition or some noncompensable condition. As such, the current record does not support a conclusion that claimant was in the "work force."

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).

⁴ The record does not demonstrate that claimant has initiated a "post-aggravation rights" new medical condition claim. Thus, any consideration of "unclaimed" conditions would be premature. See ORS 656.267(3) (2001); ORS 656.278(1)(b) (2001). Instead, our decision is premised on a finding that claimant was not in the work force at the time of the current disability as required under ORS 656.278(1)(a) (2001). Under such circumstances, we are unable to authorize the reopening of claimant's 1977 right knee condition claim under ORS 656.278(1)(a) (2001).

If claimant wishes to initiate a new or omitted medical condition claim he may request formal written acceptance of the claim from the employer. ORS 656.267(1). If the employer receives such a claim, it must process it according to the Board's rules, which would include issuing a voluntary reopening notice (Form 3501) or submitting an Own Motion recommendation to the Board. See OAR 438-012-0020(1); OAR 438-012-0030; *Arvin D. Lal*, 55 Van Natta 816 (2003). Should claimant be dissatisfied with the employer's response, he may seek Board Own Motion relief.