

---

In the Matter of the Compensation of  
**ROBERT M. HADWEN, Claimant**  
Own Motion No. 05-0093M  
OWN MOTION ORDER  
Malagon Moore et al, Claimant Attorneys  
Alice M Bartelt, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

The SAIF Corporation has submitted claimant's request for reopening of his Own Motion claim for a "worsening" of his right knee condition under ORS 656.278(1)(a) (2001). Claimant's aggravation rights under his 1974 claim have expired. SAIF recommends against reopening of the claim, contending that claimant does not meet the requirements for reopening. Based on the following reasoning, we reopen the claim for a "worsened condition" under ORS 656.278(1)(a) (2001).

FINDINGS OF FACT

On April 7, 2005, we referred this matter to the Hearings Division for a Fact Finding Hearing. A hearing convened on June 15, 2005. On July 15, 2005, Administrative Law Judge (ALJ) Naugle issued an "Own Motion Recommendation" that found that claimant was in the work force at the time of his disability and that the claim should be reopened under our Own Motion authority.

We adopt the "Findings of Fact" contained in the ALJ's Own Motion Recommendation.

CONCLUSIONS OF LAW AND OPINION

We adopt the reasoning and conclusions contained in the ALJ's "Own Motion Recommendation." That is, we find that claimant was in the "work force" at the time of his disability (his February 2005 surgery), because he was making reasonable efforts to seek work. Thus, because claimant satisfied the requirements under ORS 656.278(1)(a) (2001), claim reopening is warranted.

We also adopt the ALJ's reasoning and conclusions regarding claimant's request for a penalty. That is, we find that SAIF had a legitimate doubt regarding its liability.

Accordingly, we authorize the reopening of claimant's 1974 injury claim for SAIF to provide benefits in accordance with law. When claimant's condition is medically stationary, SAIF shall close the claim pursuant to OAR 438-012-0055.

Claimant's attorney is allowed an approved fee in the amount of 25 percent of any increased temporary disability compensation resulting from this order, not to exceed \$1,500, payable by SAIF directly to claimant's attorney. *See* OAR 438-015-0080(1).

IT IS SO ORDERED.

Entered at Salem, Oregon on December 22, 2005