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In the Matter of the Compensation of  
**WINIFRED PARSONS, Claimant**  
Own Motion No. 04-0415M  
OWN MOTION ORDER  
Unrepresented Claimant  
Liberty NW Ins Corp, Insurance Carrier

Reviewing Panel: Members Langer and Biehl.

The insurer has submitted claimant's request for claim reopening for her "worsening" claim for previously accepted left foot and toe conditions. *See* ORS 656.278(1)(a) (2001). Claimant's aggravation rights have expired. The insurer opposes the reopening of the claim, contending that claimant was not in the work force at the time of the current disability. Claimant has not responded to the insurer'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).<sup>1</sup> *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

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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.

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.<sup>2</sup>

Accordingly, the request for reopening of claimant's "worsening" claim is denied.<sup>3</sup> Claimant's entitlement to medical expenses pursuant to ORS 656.245 is not affected by this order.<sup>4</sup>

IT IS SO ORDERED.

Entered at Salem, Oregon on January 12, 2005

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<sup>2</sup> 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).

<sup>3</sup> The record does not demonstrate that claimant has initiated a "post-aggravation rights" new or omitted medical condition claim. Under such circumstances, we have limited our review to the question of whether claimant's Own Motion claim should be reopened for a "worsening" of her accepted conditions under ORS 656.278(1)(a) (2001).

If claimant wishes to initiate a new or omitted medical condition claim, she may request formal written acceptance of the claim from the insurer. ORS 656.267(1) (2001). If the insurer 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 insurer's response, she may seek Board Own Motion relief.

<sup>4</sup> Finally, inasmuch as claimant is unrepresented, she may wish to consult the Workers' Compensation Ombudsman, whose job it is to assist injured workers in such matters. She 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