
In the Matter of the Compensation of
MARK EVONIUK, Claimant
Own Motion No. 05-0124M
OWN MOTION ORDER
Unrepresented Claimant
SAIF Corporation, Insurance Carrier

Reviewing Panel: Members Kasubhai and Lowell.

The SAIF Corporation has submitted claimant's request for claim reopening for a worsening of his right knee condition. *See* ORS 656.278(1)(a) (2001). Claimant's aggravation rights have expired. SAIF opposes the reopening of the claim, contending that claimant was not 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). *Id.* If a claimant meets these requirements, his or her Own Motion claim qualifies for reopening either by the Board or the carrier.

Under the *Dawkins* criteria, 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 making reasonable efforts to obtain employment; or (3) not employed, but willing to work and is not making reasonable efforts to obtain employment because a work-related injury has made such efforts futile. *Dawkins*, 308 Or at 258; *Kemp*, 54 Van Natta at 502-03.

Here, claimant meets the first two reopening requirements. In this regard, Dr. Singer, claimant's attending physician, recommended surgery and released claimant from work due to a worsening of his compensable right knee condition. Thus, claimant's compensable right knee condition worsened resulting in the inability to work and requiring surgery. However, claimant must also establish that he remained in the work force under the *Dawkins* criteria, as summarized above.

The “date of disability” for the purpose of determining work force status for a worsened condition claim in Own Motion status is the date the claimant’s claim worsened: (1) resulting in a partial or total inability to work; and (2) requiring (including a physician’s recommendation for) hospitalization or inpatient or outpatient surgery, or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the injured worker to return to work. *Thurman M. Mitchell*, 54 Van Natta 2607 (2002).

On January 17, 2005, Dr. Singer requested authorization to perform surgery on claimant’s right shoulder. (Ex. 13). On February 8, 2005, Dr. Singer noted that, after surgery, claimant would be “out of work completely for a few days.” (Ex. 16).

Based on Dr. Singer’s comments, we conclude that claimant sustained an inability to work and was in need of surgery for his compensable right knee condition as of February 8, 2005. In other words, as of February 8, 2005, claimant’s compensable condition worsened pursuant to ORS 656.278(1)(a) (2001); *i.e.*, the worsening resulted in an inability to work and required surgery. Therefore, February 8, 2005 is the “date of disability” for the purpose of determining whether claimant was in the work force. The relevant time period for which claimant must establish he was in the work force is the time prior to February 8, 2005, when his condition worsened resulting in an inability to work and requiring surgery. *See generally Wausau Ins. Companies v. Morris*, 103 Or App 270 (1990); *SAIF v. Blakely*, 160 Or App 242 (1999); *Paul M. Jordan*, 49 Van Natta 2094 (1997).

SAIF contends that claimant was not in the work force at the time of his current disability because it has not received any documentation regarding his workforce status. However, with its recommendation form, SAIF submitted Dr. Singer’s July 13, 2004 report, noting that claimant works as a teacher. (Ex. 11). Dr. Singer also authorized timeloss following the surgery, specifically noting that claimant “will be out of work completely for just a few days, and then on limited duties for 2-3 weeks.” Finally, in claimant’s January 26, 2005 recorded statement, “Employment history” is described as follows: “Elkton School District. Currently teaching 6th grade. Four standard periods and two P.E. periods.” (Ex. 15).

Under these circumstances, we are persuaded that claimant meets the criteria necessary for his claim to be reopened. *See John R. Kennedy*, 50 Van Natta 837 (1998) (the claimant was found to be in the work force at the time of his current disability based on work references incorporated in the medical record); *Larry*

Gibson, 55 Van Natta 3866 (2003) (same). Accordingly, we authorize the reopening of the claim for SAIF to process the claim in accordance with law. ORS 656.278(1)(a) (2001).¹ When claimant's condition is medically stationary, SAIF shall close the claim pursuant to OAR 438-012-0055.

IT IS SO ORDERED.

Entered at Salem, Oregon on May 9, 2005

¹ Although acknowledging that claimant is employed and missed four days from work following his surgery, SAIF opposes reopening contending that he is "undecided whether he wants his claim reopened" and has not provided "the requisite proof of employment." As explained above, we have concluded that the record sufficiently demonstrates claimant's presence in the work force. Likewise, the claim qualifies for reopening under the statutory requirements.