

In the Matter of the Compensation of
MARVIN D. SADDLER, Claimant

Own Motion No. 06-0113M

OWN MOTION ORDER

Ronald Fontana, Fontana & Takaro, Claimant Attorneys
Liberty NW Ins Corp, Insurance Carrier

Reviewing Panel: Members Lowell and Biehl.

The insurer has submitted claimant's request for claim reopening for his "worsening" claim for a previously accepted hernia condition. *See* ORS 656.278(1)(a). Claimant's aggravation rights have expired. The insurer opposes the reopening of the claim, contending, among other issues, that claimant was not in the work force at the time of the current disability. Claimant has not responded to the insurer's contentions.

Pursuant to ORS 656.278(1)(a), 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

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.

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 unable to authorize claim reopening. ORS 656.278(1)(a) (2001); *Stuart T. Valley*, 55 Van Natta at 478-79.²

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

IT IS SO ORDERED.

Entered at Salem, Oregon on October 3, 2006

² Additionally, the insurer contended that claimant's compensable conditions have not worsened requiring the requisite medical treatment or resulted in an "inability to work." ORS 656.278(1)(a). In this particular case, these matters need not be addressed because even if the "medical treatment" and "inability to work" issues were found in claimant's favor, the record would still be insufficient to support a claim reopening under ORS 656.278(1)(a) for the reasons expressed above.

³ If a party obtains evidence that addresses the "work force," "medical treatment," and "inability to work" components of the statutory standard that are 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 Finally, 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); ORS 656.278(1)(b). Instead, our decision is limited to a review of claimant's worsening claim for his previously accepted hernia condition. Furthermore, our decision is premised on a finding that claimant was not in the work force at the time of the current disability. Under such circumstances, we are unable to authorize the reopening of claimant's 1997 hernia condition claim under ORS 656.278(1)(a).

If claimant wishes to initiate a new or omitted medical condition claim, he may request formal written acceptance of the claim from the insurer. ORS 656.267(1). If the insurer receives such a claim, and the claim is "determined to be compensable," it must be processed according to the Board's rules. See 438-012-0001(4) (WCB Admin. Order No. 3-2005, eff. January 1, 2006); OAR 438-012-0030(1); *James W. Jordan*, 58 Van Natta 34, 37 (2006).