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In the Matter of the Compensation of  
**EDWIN V. JOHNSON, Claimant**  
Own Motion No. 05-0314M  
OWN MOTION ORDER ON RECONSIDERATION  
Welch Bruun & Green, Claimant Attorneys  
Alice Bartelt, SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Kasubhai and Lowell.

On October 21, 2005, we declined to authorize the reopening of claimant's "worsening" claim under ORS 656.278(1)(a) for his previously accepted low back condition. *Edwin V. Johnson*, 57 Van Natta 2768 (2005). We found that claimant had not established that he was in the work force at the time of his current worsening. We also noted that the SAIF Corporation had challenged the appropriateness of the proposed medical treatment.

Claimant requested reconsideration of our Own Motion Order. Thereafter, we abated our order and established a briefing schedule to allow the parties to submit their positions regarding claimant's request for reconsideration. The parties submitted briefs regarding the "work force" issue. However, regarding the "medical treatment" issue, the parties advised that a managed care organization (MCO) was in the process of determining whether the proposed treatment was reasonable and necessary.

On February 27, 2006, we postponed action on the "claim reopening" matter to await resolution of the pending medical treatment dispute. *Edwin V. Johnson*, 58 Van Natta 622 (2006). On July 20, 2006, noting that Dr. Tien, claimant's attending physician, had withdrawn his request for surgery, the MCO dismissed its review.

Pursuant to ORS 656.278(1)(a), among other requirements for the reopening of an Own Motion claim for a worsening of a compensable injury, 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. In *Larry D. Little*, 54 Van Natta 2536 (2002), we concluded that if any one of the three qualifying medical treatments listed in ORS 656.278(1)(a) is satisfied, a "worsening condition" claim meets the medical treatment requirement for reopening in Own Motion.

These three qualifying medical treatments are as follows: (1) “Surgery” is defined as an invasive procedure undertaken for a curative purpose that is likely to temporarily disable the worker; and (2) “hospitalization” is defined as a nondiagnostic procedure that requires an overnight stay in a hospital or similar facility. The third type of qualifying treatment requires establishment of three elements: (a) curative treatment (treatment that relates to or is used in the cure of diseases, tends to heal, restore to health, or to bring about recovery); (b) prescribed in lieu of (in the place of or instead of) hospitalization; and (c) that is necessary (required or essential) to enable the injured worker to return to work. *Id.* at 54 Van Natta 2542, 2546.

The issue of whether a worsening of the compensable injury requires hospitalization, 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” presents a medical question that must be addressed by persuasive medical evidence in the record. *Little*, 54 Van Natta at 2542-43. In other words, we cannot infer that a treatment involves one of the above medical treatment requirements under ORS 656.278(1)(a). *SAIF v. Calder*, 157 Or App 224, 227-28 (1998); *Little*, 54 Van Natta at 2543.

Here, claimant requested reopening of his 1993 injury claim based on his physician’s (Dr. Tien’s) recommendation that he undergo surgery for his compensable low back condition. That recommendation was submitted to an MCO, which subsequently dismissed its review because Dr. Tien withdrew his surgery request.<sup>1</sup>

Consequently, there is no recommendation of surgery (or hospitalization) addressing claimant’s “worsened condition” claim. Nor does the record support the existence of “other curative treatment prescribed in lieu of hospitalization” that was necessary to enable claimant to return to work. ORS 656.278(1)(a); *Lori I. Ake*, 57 Van Natta 3129, 3130 (2005); *Little*, 54 Van Natta at 2546.

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<sup>1</sup> Claimant’s counsel indicates that claimant “has no further information at this time to present to the Board for Own Motion review.” We interpret that statement to mean that claimant does not intend to challenge the MCO decision.

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Under these circumstances, we conclude that this Own Motion claim for a worsening of claimant's previously accepted low back condition does not satisfy the criteria set forth in ORS 656.278(1)(a) to qualify this worsening claim for reopening.<sup>2</sup>

Accordingly, on reconsideration, we adhere to and republish our October 21, 2005 order, as supplemented herein. The parties' rights of appeal and reconsideration shall begin to run from the date of this order.

IT IS SO ORDERED.

Entered at Salem, Oregon on September 18, 2006

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<sup>2</sup> In light of our conclusion, we need not address the parties' "work force" arguments. In this particular case, this matter need not be addressed because even if the "work force" issue was 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.