
In the Matter of the Compensation of
SHELLEY R. SHARP, Claimant
Own Motion No. 09-0161M
OWN MOTION ORDER
Unrepresented Claimant
Liberty NW Ins Corp, Carrier

Reviewing Panel: Members Weddell and Langer.

The insurer has submitted claimant's request for reopening of her "worsened condition" claim for her previously accepted bilateral wrist conditions. *See* ORS 656.278(1)(a). 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.

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.²

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.

² Generally, the following evidence is considered in determining whether a claimant was in the "work force": 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 a 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. *Jennifer L. Williams*, 61 Van Natta 2161 (2009).

In addition, claimant must have also been willing to work at the time of disability. If claimant was not working or actively seeking work at the time of disability and is asserting that the work injury made such efforts futile, claimant may prove willingness to work by submitting a sworn affidavit attesting to willingness to work during the relevant time period. *Gary R. Grah*, 58 Van Natta 443, 445-46 (2006).

The insurer contends that claimant was not in the work force at the time of the current disability. In support of its contention, the insurer submits claimant's work questionnaire (completed on October 17, 2009), which states that: (1) she is not currently in the work force; (2) she is not retired; and (3) she last worked on August 28, 2007.³

Under such circumstances, the record does not demonstrate claimant's presence in the work force at the time of her current disability.⁴ Accordingly, the request for reopening of claimant's "worsened condition" claim is denied. Claimant's entitlement to medical expenses pursuant to ORS 656.245 is not affected by this order.⁵

IT IS SO ORDERED.

Entered at Salem, Oregon on December 11, 2009

³ Claimant explains that she left work for a year for educational purposes.

⁴ 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).

⁵ Inasmuch as claimant is unrepresented, she may wish to consult the Ombudsman for Injured Workers, whose job it is to assist injured workers. She may contact the Ombudsman, free of charge, at 1-800-927-1271, or write to:

OMBUDSMAN FOR INJURED WORKERS
DEPT OF CONSUMER & BUSINESS SERVICES
PO BOX 14480
SALEM OR 97309-0405