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In the Matter of the Compensation of  
**RONALD C. MARKUS, Claimant**  
Own Motion No. 15-000700M  
OWN MOTION ORDER  
Unrepresented Claimant  
City County Ins Services, Carrier

Reviewing Panel: Members Lanning and Curey.

The carrier has submitted claimant's request for reopening of a "worsening" claim for his previously accepted condition. *See* ORS 656.278(1)(a). The carrier 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), one of the requirements for the reopening of an Own Motion claim for a worsening of a compensable injury is that the worker must be in the "work force" at the time of disability.<sup>1</sup> *See Dawkins v. Pacific Motor Trucking*, 308 Or 254 (1989). If a claim does not satisfy this requirement, the Own Motion claim does not qualify for reopening. *See Patrick T. Daggett*, 62 Van Natta 2465 (2010).<sup>2</sup>

Here, claimant's "work force" status has been challenged. Thus, he must provide evidence to satisfy the *Dawkins* criteria. *See Stuart T. Valley*, 55 Van Natta 475 (2003). Although given an opportunity to respond to the carrier's recommendation regarding his "work force" status, claimant has not done so.

Consequently, the record does not establish that claimant was in the work force at the time of his disability. Therefore, we are unable to authorize claim reopening. ORS 656.278(1)(a); *Valley*, 55 Van Natta at 478-79.

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<sup>1</sup> The carrier also contended that the claim did not satisfy the "inability to work" requirement under ORS 656.278(1)(a). Based on our finding that the "work force" requirement has not been met, that additional issue need not be addressed.

<sup>2</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.

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

**IT IS SO ORDERED.**

Entered at Salem, Oregon on January 5, 2016

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<sup>3</sup> Because claimant is unrepresented, he may wish to consult the Ombudsman for Injured Workers. He 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