
In the Matter of the Compensation of
STEVEN C. MANUEL, Claimant
Own Motion No. 16-00007OM
OWN MOTION ORDER
Ransom Gilbertson Martin et al, Claimant Attorneys
Liberty Mutual Ins, Carrier

Reviewing Panel: Members Weddell and Johnson.

The insurer has submitted a “Carrier’s Own Motion Recommendation,” indicating that claimant requests that it reopen his Own Motion claim for a “worsening” of his previously accepted right knee conditions (right knee strain and right knee meniscus tear). *See* ORS 656.278(1)(a). The insurer recommends against reopening the claim. Based on the following reasoning, we decline to authorize claim reopening.

FINDINGS OF FACT

On December 1, 2002, claimant sustained a compensable right knee injury. The insurer ultimately accepted right knee strain and right knee meniscus tear conditions. (Exs. 1, 2, 3).

An August 17, 2004 Notice of Closure awarded 20 percent (30 degrees) scheduled permanent partial disability (PPD) for loss of use or function of the right leg (knee). (Ex. 4). Claimant’s aggravation rights expired August 17, 2009.

On October 6, 2015, claimant was referred to Dr. Huff, orthopedist, by Mr. Penner, physician’s assistant. (Ex. 6-2). Regarding claimant’s “occupation,” Dr. Huff noted: “He is on disability. Right shoulder, back, right knee.” (Ex. 6-4). Dr. Huff recommended right knee replacement surgery. (Ex. 6-6).

CONCLUSIONS OF LAW AND OPINION

The issue is whether claimant’s Own Motion claim qualifies for reopening for a worsening of his previously accepted conditions (right knee strain and right knee meniscus tear) under ORS 656.278(1)(a). Among the requirements for the reopening of such a claim, 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 *James J. Kemp*, 54 Van Natta 491 (2002).

¹ 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; (2) not employed, but willing to work and is making

Here, the insurer contends that claimant was not in the work force at the time of disability. In response, claimant's attorney asserts that claimant informed him that: (1) claimant left the work force as a direct result of physical and mental health complications caused by the December 2002 work injury; (2) knee symptoms from his work injury have severely limited his employment status; and (3) knee problems caused him to develop depression and anxiety disorders, which in combination with his physical knee symptoms, resulted in his inability to work.

It is claimant's burden to prove that he remained in the work force. ORS 656.266(1); *Donald L. Duquette*, 60 Van Natta 797 (2008); *Evalyn V. Stevens*, 59 Van Natta 1906 (2007). Claimant's attorney's assertions, in the absence of supporting evidence, are insufficient to establish that claimant was in the work force at the time of disability. *See SAIF v. Cruz*, 120 Or App 65, 69 (1993) (attorney's unsupported representations did not constitute evidence); *Sandra L. Sanders*, 64 Van Natta 500, 502 (2012); *Reba F. Tibbetts*, 54 Van Natta 1032, 1034 (2002); *Earl J. Prettyman*, 46 Van Natta 1137 (1994). Moreover, because the record does not establish that claimant's mental conditions have been accepted or are attributable to his previously accepted right knee strain and right knee meniscus tear, his attorney's representations would be insufficient for us to consider him to be in the work force. *Matthew S. Burnett*, 60 Van Natta 2712 (2008).

Under these circumstances, we conclude that the Own Motion claim for worsened compensable right knee conditions does not satisfy the "work force" requirement under the *Dawkins* criteria.² Accordingly, we are not authorized to reopen this Own Motion claim for a worsening of claimant's previously accepted right knee conditions.

Claimant's entitlement to medical expenses pursuant to ORS 656.245 is not affected by this order.

IT IS SO ORDERED.

Entered at Salem, Oregon on June 1, 2016

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 502-03.

² Given our decision regarding the "work force" issue, it is unnecessary to address the "inability to work" factor under ORS 656.278(1)(a). *James W. Terry*, 65 Van Natta 881, 882 (2013).