

In the Matter of the Compensation of
LESLIE D. CUTTING, Claimant
Own Motion No. 16-00018OM
OWN MOTION ORDER
Unrepresented Claimant
Liberty NW Ins Corp, Carrier

Reviewing Panel: Members Lanning and Johnson.

The insurer has submitted claimant's request for reopening of a "worsening" claim for his previously accepted low back condition. *See* ORS 656.278(1)(a). 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), 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. *See Dawkins v. Pacific Motor Trucking*, 308 Or 254 (1989).¹ 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).

Here, in a February 2016 form, claimant indicated that he is not "currently in the work force" and is "currently retired." (Ex. 9) Thus, the record does not establish that he is in the "work force."²

Accordingly, we are not authorized to reopen his "worsened condition" claim. Claimant's entitlement to medical expenses pursuant to ORS 656.245 is not affected by this order.³

IT IS SO ORDERED.

Entered at Salem, Oregon on March 28, 2016

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 If claimant wishes to submit further information addressing the "work force" component of the statutory standard, he 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).

³ 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