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In the Matter of the Compensation of  
**GREGORY NALIVAICO, Claimant**  
Own Motion No. 16-00014OM  
OWN MOTION ORDER  
Unrepresented Claimant  
Gress & Clark LLC, Defense Attorneys

Reviewing Panel: Members Curey and Weddell.

The carrier has submitted its recommendation against the reopening of claimant's Own Motion claim for a "worsening" of his previously accepted right foot/ankle conditions. ORS 656.278(1)(a). The carrier opposes reopening, contending, among other issues, that claimant's compensable conditions do not require any medical treatment that qualifies for claim reopening. Based on the following reasoning, we deny claim reopening.

Pursuant to ORS 656.278(1)(a), among the requirements for the reopening of an Own Motion claim for a worsening of a compensable injury is a requirement that 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. *Heath A. Wiltfong*, 57 Van Natta 3108 (2005).

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. *Terry L. Smith*, 55 Van Natta 2763 (2003).

Here, the record does not establish that claimant's accepted conditions required hospitalization, surgery or other curative treatment that was prescribed in lieu of hospitalization that was necessary to enable him to return to work.<sup>1</sup> ORS 656.278(1)(a); *Larry Little*, 54 Van Natta 2536, 2546 (2002). In other words, no physician recommended surgery or hospitalization for claimant's compensable condition. Moreover, the record does not establish that there was any medical

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<sup>1</sup> The carrier also contended that claimant's Own Motion claim does not satisfy the "inability to work" requirement under ORS 656.278(1)(a). Because the "medical treatment" requirement has not been met, the "inability to work" issue need not be addressed.

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treatment prescribed for his previously accepted conditions that constitutes “other curative treatment prescribed in lieu of hospitalization that is necessary to enable the injured worker to return to work.” *See Danny L. Johnson*, 56 Van Natta 129 (2004).

Under such circumstances, the aforementioned statutory requirement for claim reopening has not been satisfied. Accordingly, the request for claim reopening is denied.<sup>2</sup> Claimant’s entitlement to medical services pursuant to ORS 656.245 is not affected by this order.

**IT IS SO ORDERED.**

Entered at Salem, Oregon on April 18, 2016

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<sup>2</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