

In the Matter of the Compensation of  
**RICHARD S. HERD, Claimant**

Own Motion No. 03-0075M

**OWN MOTION ORDER**

Brian R Whitehead, Claimant Attorneys  
Michael G Bostwick LLC, Defense Attorneys  
Sheridan Levine LLP, Defense Attorneys

Reviewing Panel: Members Kasubhai and Langer.

The self-insured employer submitted claimant's request for claim reopening. Claimant's aggravation rights have expired. The employer recommended against the reopening of claimant's 1993 claim for a worsening of his compensable low back condition. *See* ORS 656.278(1)(a) (2001).

With its recommendation, the employer submitted documents which indicated that litigation was pending regarding Safeco's January 24, 2003 responsibility denial of claimant's low back condition in a claim with an November 2002 date of injury. (WCB Case No. 03-00879). The employer also issued a responsibility denial of claimant's current low back condition on which claimant requested a hearing. (WCB Case No. 03-01583). These matters were consolidated and heard in tandem before an Administrative Law Judge (ALJ).

By Opinion and Order dated August 19, 2003, ALJ Brazeau set aside Safeco's denial, finding Safeco responsible for claimant's current low back condition under his November 2002 injury claim. Safeco requested review of the ALJ Brazeau's order, and, in an order issued on today's date, we affirmed ALJ Brazeau's order.

In light of such circumstances, claimant's current low back condition for which claimant has requested Own Motion relief has been found to be the responsibility of another carrier. Accordingly, reopening of claimant's 1993 claim under ORS 656.278(1)(a) (2001) for the same condition finally found to be the responsibility of another carrier is not warranted.

Accordingly, claimant's request for Own Motion relief under the 1993 claim with the self-insured employer is denied.

**IT IS SO ORDERED.**

Entered at Salem, Oregon on February 12, 2004