In the Matter of the Compensation of
JOHN G. TALSMA, Claimant
WCB Case No. 01-07228
INTERIM ORDER
Philip H Garrow, Claimant Attorneys
Scheminske et al, Defense Attorneys

Reviewing Panel: Members Lowell and Biehl.

The insurer requests review of Administrative Law Judge (ALJ) Brazeau's April 30, 2002 order that set aside its denial of claimant's occupational disease claim for a bilateral carpal tunnel syndrome (CTS) condition. Claimant cross-requests review of that portion of the ALJ's March 6, 2002 interim order that: (1) directed the insurer to pay claimant $504.01 additional time loss compensation; and (2) assessed an attorney fee for the insurer's allegedly unreasonable failure to pay that compensation. The insurer also argues that claimant's request for review regarding the interim order is untimely. To clarify the current procedural posture of this case, we issue the following interim order, which holds that jurisdiction regarding the issues addressed in the ALJ's March 6, 2002 "Interim Order" remains with the Hearings Division.

FINDINGS OF FACT

Claimant filed a claim for bilateral CTS, which the insurer denied. Claimant requested a hearing and raised issues of compensability, rate of claimant's temporary disability, and penalties for the insurer's allegedly unreasonable failure to pay temporary disability at the correct rate.

On March 6, 2002, the ALJ issued an "Interim Order" that awarded claimant an additional $504.01 time loss compensation and an attorney fee for the insurer's allegedly unreasonable failure to pay that compensation. The March 6, 2002 order is captioned "Interim Order" and it does not include notice of the parties' appeal rights.

On April 30, 2002, the ALJ issued an "Opinion and Order" that set aside the insurer's denial of claimant's claim for CTS. The April 30, 2002 order includes notice of the parties' appeal rights, but it neither mentions nor incorporates the March 6, 2002 order nor the issues addressed in that order.

The insurer requested review of the April 30, 2002 order and claimant cross-requested review of the March 6, 2002 order.

CONCLUSIONS OF LAW AND OPINION

Claimant asks us to exercise our *de novo* review authority over his appeal from the ALJ's March 6, 2002 Interim Order that directed the insurer to pay to claimant an additional $504.01 in time loss compensation.[1] The insurer contends that claimant's request for review regarding the Interim Order is untimely or, alternatively, that the ALJ correctly calculated claimant's time loss in that order. It is premature to address the merits of the parties' arguments, because we lack jurisdiction over the Interim Order, as explained below.

An ALJ's order that issues without including notice of the parties' appeal rights is not a final order.[2] *See Oldham v. Plumlee*, 151 Or App 402 (1997); *Callahan v. Employment Division*, 97 Or App 234 (1989) (notice of appeal rights is a "material part of a final order") (citing ORS 183.470(4)); *Delbert Shay*, 52 Van Natta 1924, *on recon* 52 Van Natta 2020 (2000). Only final orders may be appealed to the Board under ORS 656.289(3). *See, e.g., Bradley H. Bishop*, 48 Van Natta 1729 (1996). Therefore, we dismiss claimant's cross-request for review from the non-final interim order for lack of jurisdiction.[3]

Because we lack jurisdiction over the ALJ's Interim Order, we likewise lack authority to remand the case to the ALJ. Nonetheless, because the ALJ's Interim Order is not final, we return the record to the ALJ so that he can issue another order that includes the correct notice of appeal rights. That order should issue as soon as possible. (Before doing so, the ALJ should obtain a new WCB

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[1] Claimant also asks us to assess a penalty, based on the insurer's allegedly unreasonable failure to pay that temporary disability at the correct rate.

[2] In *Darrell D. Brown*, 44 Van Natta 861 (1992), the Board held that, where the claimant's entitlement to temporary disability was finally allowed and fixed by an ALJ's (then Referee's) order, the order was final, notwithstanding its "interim" designation and the lack of a statement explaining the parties' rights of appeal. The Board has subsequently implicitly disavowed the portion of *Brown* stating that "a Referee's order does not depend upon a notice of appeal rights to be considered final." *See John Randall*, 53 Van Natta 1461 (2001) ("An order that contains incorrect or no appeal language is not final."); *Brown*, 44 Van Natta at 862.

[3] The ALJ's "compensability" order does contain a "notice of appeal rights." Had that order referred to the "Interim Order" or to the temporary disability issue, we would have considered the Interim Order and its accompanying issues to have been encompassed within the final compensability order and, as such, subject to our appellate review. However, where, as here, the Interim Order (and its issues) are unambiguously separate from the final order, we are without appellate authority to consider the non-final interim order.

case number from the Docketing Section, to assign to his eventual final order.) Once the aggrieved party has filed a request for review of that order, that appeal will be consolidated for review with the insurer's pending review of the ALJ's compensability decision.[4] Because the parties have already addressed the merits of the temporary disability and claim processing issues, no additional briefing will be necessary. Instead, on receipt of a request for Board review of the ALJ's eventual order, we will proceed with our review of the parties' disputes. Consequently, this is an Interim Order, which will be incorporated into our eventual final, appealable order.

IT IS SO ORDERED.

Entered at Salem, Oregon on October 18, 2002

[4] The ALJ should have assigned a new "WCB Case Number" for the temporary disability issue and mailed a final order (with notice of appeal rights) under that number, before addressing compensability in a separate order. *See Steven G. Zimick*, 53 Van Natta 746 n. 1 (2001) (where ALJ bifurcated compensability issue from temporary disability issue and issued final order regarding temporary disability, compensability issue remained pending, subject to separate proceeding). In any event, our order should not be understood to suggest that an ALJ's order that fails to address a raised issue is not final or that an interim order may not be incorporated within a final order. We address only the particular circumstances of this case: A final order issued with notice of appeal rights, which did not refer to, or incorporate, an interim order which had issued without appeal rights. Under these circumstances, we have jurisdiction over the former, but not the latter. *See, e.g., Price v. SAIF*, 296 Or 311, 315 (1984) (an order that addresses two separate aspects of the same claim may finally determine one issue but not the other).