

In the Matter of the Compensation of
LAWRENCE E. PHILLIPS, Claimant

WCB Case No. 04-01765

ORDER ON REVIEW

Claimant Unrepresented

Bruce A Bornholdt, SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Langer and Biehl.

Claimant, *pro se*, requests review of Administrative Law Judge (ALJ) Bethlahmy's order that: (1) declined claimant's motion to continue the hearing for the submission of an additional report from his attending physician; (2) declined to reopen the record to admit "post-hearing" medical reports and payroll records; and (3) upheld the SAIF Corporation's denial of claimant's occupational disease claim for a left shoulder condition. On review, the issues are the ALJ's evidentiary rulings and compensability.

We adopt and affirm the ALJ's order with the following supplementation.

The ALJ declined to continue the hearing for submission of a medical report from the attending physician, Dr. Bowman, in response to a supplemental report from an examining physician, Dr. Woodward. The ALJ noted that Dr. Woodward's report was authored on May 7, 2004 and that the hearing was on June 3, 2004 and, further, that Dr. Bowman had already issued a report on April 4, 2004. (Tr. 7). After the record closed on June 3, 2004, the ALJ declined to reopen the record to admit payroll records and medical reports from Drs. Switlyk and Bowman, finding no basis to receive them into evidence. (Proposed Exs. 22C, 24, 25).¹

We review the ALJ's continuance and evidentiary rulings for abuse of discretion. *See Georgia-Pacific Corp. v. Kight*, 126 Or App 244, 246 (1994); *Jesus M. Delatorre*, 51 Van Natta 728 (1999); *James D. Brusseau II*, 43 Van Natta 541 (1991). Given the nearly one-month period between Dr. Woodward's May 7, 2004 report and the June 3, 2004 hearing, we find no abuse of discretion in the ALJ's decision declining to continue the hearing for a report from Dr. Bowman in response to Dr. Woodward's report. Moreover, we find no abuse of discretion in the ALJ declining to reopen the record to admit the proposed exhibits. That is,

¹ Dr. Switlyk's report was dated May 4, 2004 and Dr. Bowman's report was dated June 8, 2004.

claimant did not show that these documents (or their substance) could not have been submitted at hearing with due diligence.

Moreover, even if we considered the proposed exhibits, we would find that their consideration would not affect the outcome of the case. Claimant did not attend the hearing. Because of this, any “history-based” conclusions in the medical reports regarding causation have no probative value. *See Zurita v. Canby Nursery*, 115 Or App 330(1992), *rev den* 315 Or 443 (1993) (affirming the Board's determination that medical reports are *prima facie* evidence only of medical matters, not of causation); *Janette Valles-Key*, 55 Van Natta 2280 (2003) (following *Zurita*). Therefore, we conclude that the reports from Drs. Bowman and Switlyk would not satisfy claimant’s burden of proof even if we considered them.

ORDER

The ALJ’s order dated July 2, 2004 is affirmed.²

Entered at Salem, Oregon on October 22, 2004

² Because claimant is not represented, he may wish to consult the Workers’ Compensation Ombudsman, whose job it is to assist injured workers in such matters. He may contact the Workers’ Compensation Ombudsman, free of charge, at 1-800-927-1271, or write to:

WORKERS’ COMPENSATION OMBUDSMAN
DEPT OF CONSUMER & BUSINESS SERVICES
PO BOX 14480
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