

In the Matter of the Compensation of
ELLEN E. HALE, Claimant

WCB Case No. 06-05986, 06-02185, 06-02184, 06-02115, 06-02114, 06-01389,
06-00663, 06-00662, 06-00661, 06-00660, 06-00528, 06-00453, 06-00452

ORDER ON REVIEW (REMANDING)

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Reviewing Panel: Members Langer and Biehl.

Claimant requests review of those portions of Administrative Law Judge (ALJ) Wren's order that: (1) upheld the denial of her occupational disease claim for non-Hodgkins lymphoma, seizures, and hearing loss on the ground that claimant did not establish legal causation; and (2) denied her request to reopen the record for purpose of "redesignating" already-admitted evidence as applicable to legal causation. Mattel, Inc., and its predecessors (herein jointly referred to as "the employer") cross-request review of those portions of the ALJ's order that: (1) declined to admit the employer's proposed evidence concerning compensability; and (2) denied its motion to dismiss the hearing request. On review, the issues are evidence and compensability. We vacate and remand.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact," as supplemented herein. We do not adopt the ALJ's "Ultimate Findings of Fact."

From 1965 through 2000, claimant worked at the employer's Hall Street plant.

In November 2005, claimant filed an occupational disease claim, asserting that her workplace exposure to trichloroethylene (TCE) caused non-Hodgkins lymphoma, seizures, and hearing loss. The employer denied the claim. Claimant requested a hearing.

Before the scheduled hearing, a conference was held. At that conference, claimant conceded that she could not prove that her TCE work exposure was the major contributing cause of her claimed conditions. The employer argued that, regardless of that concession, it should be permitted to introduce evidence regarding the compensability of the claimed conditions. In an interim ruling, the ALJ excluded the employer's evidence, reasoning that, in light of claimant's concession, such evidence was irrelevant. The ALJ subsequently denied claimant's motion to reopen the record to "redesignate" exhibits, which had previously been admitted solely for the purpose of determining whether the claim was timely filed, as applicable to establishing legal causation.¹

CONCLUSIONS OF LAW AND OPINION

The ALJ denied the employer's motion to dismiss the hearing request, finding that claimant neither abandoned her hearing request nor engaged in conduct resulting in unjustified delay. The ALJ also upheld the employer's denial, concluding that claimant had not proved either legal or medical causation.

On review, claimant asserts that the ALJ should not have made a determination on legal causation. Alternatively, claimant asserts that the ALJ should have granted the motion to redesignate certain exhibits as applicable to the issue of legal causation.

The employer challenges the procedure by which the denials were upheld, asserting that the ALJ's evidentiary ruling did not result in a substantive hearing process necessary for the issuance of a final order. The employer also contends that, rather than uphold its denial, the ALJ should have dismissed the hearing request. Finally, the employer asserts that, if the claim is not dismissed, its denial should be upheld solely on the basis of legal, rather than medical, causation.

Based on the following reasoning, we conclude that the ALJ's evidentiary ruling, which barred the employer from submitting evidence in support of its denial, constitutes an abuse of discretion. In light of this threshold ruling, we decline to address the parties' other arguments.

ORS 656.283(7) provides that the ALJ is not bound by common law or statutory rules of evidence and may conduct a hearing in any manner that will achieve substantial justice. Thus, the ALJ has broad discretion regarding the

¹ The employer subsequently withdrew its timeliness defense.

admissibility of evidence at a hearing. *Brown v. SAIF*, 51 Or App 389, 394 (1981); *Debra A. Gillman*, 58 Van Natta 2041 (2006). We review an ALJ's evidentiary ruling for abuse of discretion. *SAIF v. Kurcin*, 334 Or 399 (2002); *Jesus M. DeLatorre*, 51 Van Natta 728 (1999).

In *Ronnie L. Nielson*, 60 Van Natta 2878 (2008), a decision issued subsequent to the ALJ's order, we addressed a similar exclusionary ruling. As with the instant matter, the ALJ in *Nielson* excluded the employer's evidence on compensability because the claimant conceded an inability to establish that work exposure was the major contributing cause of the claimed occupational disease. In finding that such a ruling constituted an abuse of discretion, we explained:

“the employer is entitled to present evidence in defense of its claim processing actions and its denial. The ALJ's role is to evaluate the entire record and produce an order containing an organized set of facts and conclusions of law with an explanation why the facts supported by evidence lead to the conclusion.” *Id.* at 2881 (citing *Armstrong v. Asten-Hill Co.*, 90 Or App 200, 205-06 (1988); *Jack S. Koehler*, 45 Van Natta 1728 (1993)).

By excluding the employer from submitting its “compensability” evidence in *Nielson*, we found that the ALJ deprived the employer of the opportunity to put on evidence regarding its denial of the occupational disease claim, which it has a right to do as a party to the hearing. *Id.* In doing so, we acknowledged that “the ALJ's ruling was apparently designed to streamline the compensability analysis and arguably save administrative resources.” *Id.* at 2883. Nevertheless, we held that “a more expansive presentation of evidence regarding the denied claim was required.” *Id.* We emphasized that, because the workers' compensation system is “the sole and exclusive source and means” for receiving benefits for injuries and diseases arising out of and in the course of employment, it was “incumbent upon the parties to garner their evidence in support of their respective positions regarding the procedural and substantive validity of a beneficiary's claim under ORS 656.807(2).” *Id.* at 2383-84 n 12.

We find the instant matter indistinguishable from *Nielson*. Because the employer was denied a right to put on otherwise admissible evidence regarding its denial, only because claimant offered a “concession” regarding what he could not prove, we find an abuse of the ALJ's discretion in excluding the employer's proposed evidence. As such, we find the current record to be incompletely and

insufficiently developed, and, accordingly, find a compelling reason to remand. ORS 656.295(5); *Nielson*, 68 Van Natta at 2884; *Kienow's Food Stores v. Lyster*, 79 Or App 416 (1986) (remand appropriate upon a showing of good cause or another compelling basis). As we observed in *Nielson*, 68 Van Natta at 2883-84 n 12, upon remand, we expect the parties “to fully avail themselves of their individual and mutual opportunities to litigate their dispute before the administrative forum expressly designated for the resolution of such conflicts” consistent with the principles and objectives espoused in Chapter 656. At that time, the parties will have an opportunity to present their proposed evidence.²

Accordingly, the ALJ’s order dated June 5, 2008 is vacated and the case is remanded to ALJ Wren for further proceedings consistent with this order. These proceedings shall be conducted in any matter that the ALJ deems will achieve substantial justice. After closure of the evidentiary record, the ALJ shall reconsider the disputed issues and issue a final, appealable order.

IT IS SO ORDERED.

Entered at Salem, Oregon on December 29, 2008

² Because we are remanding the case to the ALJ, we do not address the remaining issues. The parties may direct their arguments regarding those issues to the ALJ on remand.