
In the Matter of the Compensation of
LEVIUS TOUSSAINT, Claimant
WCB Case No. 08-07198
ORDER ON REVIEW
Unrepresented Claimant
Radler Bohy et al, Defense Attorneys

Reviewing Panel: Members Lowell and Biehl.

Claimant, *pro se*,¹ requests review of Administrative Law Judge (ALJ) Lipton's order that upheld the self-insured employer's denial of claimant's occupational disease claim for bilateral wrist conditions. With his briefs, claimant attached 64 pages of documents, including some medical chart notes that were not admitted into the record at hearing. We treat claimant's submissions as a motion for remand to the ALJ for further evidence taking.² *Juan H. Mendez*, 60 Van Natta 3150 (2008); *Judy A. Britton*, 37 Van Natta 1262 (1985). On review, the issues are remand and compensability.

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

Most of claimant's submissions are already included in the record and we have considered them. However, claimant also submitted chart notes by Dr. Karty dated February 26, 2009 and March 29, 2009, a September 26, 2008 chart note by Dr. Pinney, and 8 pages of disability certification forms, along with a cover letter and an authorization to disclose health information. These documents were not admitted into the record at hearing and we have considered them only for the purpose of determining whether remand is warranted.

¹ Inasmuch as claimant is unrepresented, he may wish to consult the Ombudsman for Injured Workers' whose job it is to assist injured workers in such matters. He may contact the Ombudsman, free of charge, at 1-800-927-1271, or write to:

DEPT OF CONSUMER & BUSINESS SERVICES
OMBUDSMAN FOR INJURED WORKERS
PO BOX 14480
SALEM OR 97309-0405

² The employer moves to strike claimant's reply brief as untimely filed. OAR 438-011-0020. We need not resolve this motion because consideration of claimant's reply brief would not affect our ultimate conclusion regarding the compensability of this disputed claim.

We may remand to the ALJ if we find that the case has been “improperly, incompletely or otherwise insufficiently developed [.]” ORS 656.295(5). There must be a compelling reason for remand to the ALJ for the taking of additional evidence. *SAIF v. Avery*, 167 Or App 327, 333 (2000). A compelling reason exists when the new evidence: (1) concerns disability; (2) was not obtainable at the time of the hearing; and (3) is reasonably likely to affect the outcome of the case. *Id.*; *Compton v. Weyerhaeuser Co.*, 301 Or 641, 646 (1986); *see also Edward M. Johnston II*, 58 Van Natta 2972, 2974 (2006) (compelling reason to remand did not exist where the offered documents were unlikely to affect the outcome of the case).

Here, to the extent that claimant has submitted written information that was not already in the record, consideration of these submissions would not likely affect the outcome of this case. Under such circumstances, remand to the ALJ for further development of the record is not warranted.

ORDER

The ALJ’s order dated March 16, 2009 is affirmed.

Entered at Salem, Oregon on October 7, 2009