

In the Matter of the Compensation of
WILLIAM S. BAUMHOFER, Claimant

WCB Case No. 08-00402

ORDER ON RECONSIDERATION

Unrepresented Claimant

Jeff R Gerner, SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Langer and Weddell.

On May 22, 2009, we affirmed an Administrative Law Judge's (ALJ's) order that: (1) found that claimant had not established extraordinary circumstances justifying his failure to appear at a scheduled hearing; and (2) dismissed claimant's hearing request under OAR 438-006-0071(2). Thereafter, claimant timely petitioned for judicial review of our order. While the case remains pending before it, the court seeks a response to claimant's assertion that he has not received transcripts from the proceedings before the Hearings Division. We treat claimant's contention as a motion for reconsideration of our previous decision. Based on the following reasoning, we grant reconsideration, but, as supplemented below, adhere to our previous decision.

Because the 30-day period within which to withdraw and reconsider our May 22, 2009 order has expired, jurisdiction over this matter is currently with the court. ORS 656.295(8); ORS 656.298(1); *see Haskell Corporation v. Filippi*, 152 Or App 117 (1998). Nevertheless, at any time subsequent to the filing of a petition for judicial review and before the date set for hearing the appeal, we may withdraw an appealed order for purposes of reconsideration. ORS 183.482(6); ORAP 4.35; *William H. McCormick*, 53 Van Natta 740 (2001). This authority is rarely exercised. *Carole A. VanLanen*, 45 Van Natta 178 (1993); *Ronald D. Chaffee*, 39 Van Natta 1135 (1987).

Here, we have chosen to exercise our authority to reconsider our appealed order. We take this action because it has come to our attention that recordings of two proceedings were available, but were not transcribed for purposes of our initial review.¹ We have since obtained copies of those transcripts and have further considered our previous decision based on those transcripts.²

¹ The first transcript is of an April 16, 2008 proceeding, in which the hearing was postponed to be rescheduled at a future date. The second transcript concerns the December 4, 2008 hearing, when the SAIF Corporation moved for dismissal of claimant's hearing request, based on his failure to appear at the scheduled hearing and the abandonment of his hearing request.

² Copies of the two hearing transcripts have been included with claimant's and SAIF's counsel's copies of this order, along with an "Amended Record for Judicial Review," which also is being forwarded to the court.

After completing our further review, we conclude that consideration of the aforementioned transcripts does not alter our prior determination that claimant's explanations for his failure to appear at the scheduled December 4, 2008 hearing does not establish extraordinary circumstances justifying the postponement of the hearing. Consequently, we continue to agree with the ALJ's decision to dismiss claimant's hearing request based on an unjustified failure to appear at the scheduled hearing.

Accordingly, on reconsideration, we adhere to and republish our May 22, 2009 order.

IT IS SO ORDERED.

Entered at Salem, Oregon on April 13, 2010