
In the Matter of the Compensation of
CHRISTOPHER J. SNYDER, Claimant
WCB Case No. 09-03821
ORDER ON REVIEW
Malagon Moore & Jensen, Claimant Attorneys
Reinisch MacKenzie PC, Defense Attorneys

Reviewing Panel: Members Weddell and Langer.

Claimant requests review of that portion of Administrative Law Judge (ALJ) Mundorff's order that upheld the self-insured employer's denial of claimant's right hand injury claim. In its respondent's brief, the employer challenges the ALJ's conclusion that claimant timely filed his request for hearing. On review, the issues are timeliness and, potentially, compensability. We vacate the ALJ's order and dismiss claimant's request for hearing.

FINDINGS OF FACT

Claimant lived in Myrtle Point, Oregon for about 2 years. In November 2008, he moved to Bandon, Oregon. (Tr. 16).

In April 2009, claimant filed a right hand injury claim. An April 24, 2009 typed "801" injury report included claimant's Myrtle Point address. (*See Ex. 2*).

On May 4, 2009, the employer mailed a denial of claimant's injury claim to claimant at the Myrtle Point address. (*See Ex. 8-2*). The denial was returned by the Post Office with notations that claimant was "not at" the Myrtle Point address and "unable to forward." (*Id.*) A second copy of the denial was mailed by certified mail to claimant at the Myrtle Point address on May 7, 2009, then returned to the employer by the Post Office as "not deliverable." (*See Ex. 9*).

On July 7, 2009, claimant requested a hearing contesting the denial.

CONCLUSIONS OF LAW AND OPINION

The ALJ held that claimant's July 7, 2009 request for hearing was timely, reasoning that the record did not establish when the denial was mailed. We disagree, as explained below.

Pursuant to ORS 656.319, a request for hearing from a denial must be filed not later than: (1) the 60th day after the mailing of the denial to the claimant; or (2) the 180th day after the mailing of the denial to the claimant if the claimant establishes that there was good cause for not filing the request by the 60th day. “Good cause” under ORS 656.319 means “mistake, inadvertence, surprise or excusable neglect.” *Hempel v. SAIF*, 100 Or App 68, 70 (1990). Claimant has the burden of proving good cause. *Cogswell v. SAIF*, 74 Or App 234, 237 (1985). Lack of diligence does not constitute good cause. *Id.*

Here, based on the employer’s receipt for certified mailing, the record establishes that it mailed a copy of its May 1, 2009 denial letter to claimant at his Myrtle Point address on May 7, 2009. (Ex. 9). Because the 60th day after May 7, 2009 was July 6, 2009, we find that the July 7, 2009 request for hearing was not filed within 60 days.

Under these circumstances, claimant is entitled to a hearing on his claim if he establishes “good cause” for filing his request more than 60 days, but less than 180 days from mailing of the denial.¹ *See Cogswell*, 74 Or App at 237. Based on the following reasoning, we are not persuaded that the “good cause” requirement has been satisfied.

As noted, a notice of the denial sent by certified mail was returned by the Post Office to the employer as undeliverable at the Myrtle Point address. Claimant acknowledges that he previously lived at that address and he does not contend that he provided the employer with a subsequent mailing address.²

Claimant’s lack of diligence in notifying the employer of his current address does not constitute “good cause” for his late request for hearing. *See Gerardo Ramirez*, 54 Van Natta 2252, 2254 (2002) (“good cause” not established where the claimant did not receive the denial because he moved without notifying the insurer of his new address or arranging with the Post Office to have his mail forwarded); *Charles R. Fritz*, 43 Van Natta 403, 404 (1991) (same). Accordingly, because claimant has not established “good cause” for his late hearing request, his request must be dismissed.

¹ Claimant acknowledged receiving actual notice of the denial in late June or early July, 2009. (Tr. 16). However, he provided no evidence explaining why he did not request a hearing until July 7, 2009 (over 60 days after the denial was mailed).

² By April 30, 2009, it appears that claimant had provided his then current Bandon address to the Washington Department of Labor and Industries. (*See Ex. 7A*). We find no similar evidence suggesting that claimant had provided his Bandon address to the employer before the denial issued.

ORDER

The ALJ's order dated November 5, 2009 is vacated. Claimant's request for hearing is dismissed.

Entered at Salem, Oregon on June 8, 2010