
In the Matter of the Compensation of
BERTHA C. ZAVALA-AVALOS, Claimant
WCB Case No. 11-01989
ORDER OF DISMISSAL
Unrepresented Claimant
Darren W Lee, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

Claimant, *pro se*,¹ requests review of Administrative Law Judge (ALJ) Crummé's December 8, 2011 order. We have reviewed the request to determine whether we have authority to consider the matter. Because the record does not establish that the other parties received timely notice of the request, we dismiss.

FINDINGS OF FACT

The ALJ's order issued December 8, 2011. The order contained a statement explaining the parties' appeal rights, which included a notice that a request for review must be mailed to the Board with copies to the other parties to the proceeding within 30 days following the issuance of the order.

On Tuesday, January 10, 2012, the Board received claimant's request for review, dated January 5, 2012. The request was mailed by regular mail to the Board in an envelope postmarked Monday, January 9, 2012. Claimant's request did not indicate that copies had been provided to the other parties to the proceeding.

CONCLUSIONS OF LAW AND OPINION

An ALJ's order is final unless, within 30 days after the date on which a copy of the order is mailed to the parties, one of the parties requests Board review under ORS 656.295. *See* ORS 656.289(3). Requests for Board review shall be mailed to the Board and copies of the request shall be mailed to all parties to the proceeding

¹ Because claimant is unrepresented, she may wish to consult the Ombudsman for Injured Workers. She 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

before the ALJ. ORS 656.295(2). Compliance with ORS 656.295 requires that statutory notice of the request be mailed or actual notice be received within the statutory period. *Argonaut Ins. Co. v. King*, 63 Or App 847, 852 (1983). Failure to timely file the request for review with the Board requires dismissal of the request for review. See ORS 656.295(2); *Mosley v. Sacred Heart Hosp.*, 113 Or App 234, 237 (1992); *Catherine C. Cordell*, 54 Van Natta 267, 268 (2002).

“Filing” means the physical delivery of a thing to any permanently staffed office of the Board, or the date of mailing. OAR 438-005-0046(1)(a). If filing of a request for Board review of an ALJ’s order is accomplished by mailing, it shall be presumed that the request was mailed on the date shown on a receipt for registered or certified mail bearing the stamp of the U.S. Postal Service showing the date of mailing. If the request is not mailed by registered or certified mail and the request is actually received by the Board after the date for filing, it shall be presumed that the mailing was untimely unless the filing party establishes that the mailing was timely. OAR 438-005-0046(1)(c).

Here, the 30th day after the ALJ’s December 8, 2011 order was January 9, 2012, a Monday. The Board received claimant’s January 5, 2012 request for review on January 10, 2012. Because the request was not mailed by registered or certified mail, and was actually received by the Board on January 10, 2012 (after expiration of the 30-day appeal period), a presumption arises that the mailing was untimely. OAR 438-005-0046(1)(c).

Nevertheless, this presumption has been rebutted because the envelope containing claimant’s request for review was postmarked January 9, 2012, which was the final day for timely filing of the request. Thus, the record establishes that claimant’s request for review was timely filed. OAR 438-005-0046(1)(a); see *Brawley A. Loza*, 60 Van Natta 1286 (2008) (timely postmark was sufficient proof of timely filing where envelope enclosing request for review was not mailed by registered or certified mail); *Yekaterina Drevenchuk*, 49 Van Natta 1016 (1997) (same).

However, claimant’s request for review did not indicate that copies of her request had been provided to the other parties to the proceeding before the ALJ. Consequently, the record does not establish that the other parties received statutory or actual notice of claimant’s request for Board review within 30 days of issuance

of the ALJ's December 8, 2011 order, as required under ORS 656.295(2).² *See Sherry A. Gomes*, 52 Van Natta 2022, 2023 (2000); *Stella T. Ybarra*, 52 Van Natta 1252 (2000). Therefore, we lack jurisdiction to review the ALJ's order, which has become final by operation of law. *See* ORS 656.289(3); ORS 656.295(2).

Finally, we acknowledge that claimant has requested review without the benefit of legal representation. We further realize that an unrepresented party is not expected to be familiar with administrative and procedural requirements of the Workers' Compensation Law. However, instructions for requesting review were stated on the ALJ's order, and we are not free to relax a jurisdictional requirement. *See Michael N. Lamb*, 55 Van Natta 1569 (2003); *Larry L. Kaden*, 53 Van Natta 1479, 1480 (2001).

Accordingly, claimant's request for Board review is dismissed. *See* ORS 656.295(2); *Mosley*, 113 Or App at 237.

IT IS SO ORDERED.

Entered at Salem, Oregon on January 20, 2012

² In the event that claimant can establish that she provided notice of her request for Board review to the other parties to the proceeding within 30 days after the ALJ's December 8, 2011 order, she may submit written information for our consideration. Because our authority to reconsider this order expires within 30 days after the date of this order, claimant must file her submission as soon as possible.