In the Matter of the Compensation of
STARLA R. ARNOLD, Claimant
WCB Case No. 10-04076
ORDER ON REVIEW
Unrepresented Claimant
Holly O'Dell, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Langer and Weddell.

Claimant, *pro se*,[1] requests review of Administrative Law Judge (ALJ) Fulsher's order that upheld the SAIF Corporation's denials of claimant's new/omitted medical condition claims for cervical, thoracic, lumbar, and left shoulder conditions. With her brief, claimant has submitted a letter from her treating chiropractor, Dr. Cooper, which was not submitted or admitted into the record at hearing. We treat claimant's submission as a motion to remand to the ALJ for the taking of further evidence. On review, the issues are remand and compensability.

We adopt and affirm the ALJ's order with the following supplementation.[2]

Our review is limited to the record developed by the ALJ. 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.[3] *Id.*; *Compton v. Weyerhaeuser Co.*, 301 Or 641, 646 (1986).

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[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

[2] Claimant's brief makes several references concerning her entitlement to an MRI. The dispute before us, however, only concerns SAIF's denials of her new/omitted medical condition claims, not any denial of medical services under ORS 656.245.

[3] Because we find, as set forth below, that claimant did not establish that Dr. Cooper's letter was unobtainable at the time of hearing, we find it unnecessary to determine whether the other two criteria for remand have been satisfied.

Claimant acknowledges that she did not obtain the submitted letter from Dr. Cooper until approximately four months after the hearing before the ALJ and closure of the record. She asserts, however, that she "did not obtain the letter sooner * * * because [she] * * * believed [that] there was sufficient medical evidence" in the record to establish compensability of her claims. That belief, however, does not establish that the letter was unobtainable at the time of hearing.[4]

Under such circumstances, remand to the ALJ for further development of the record is not warranted and claimant's motion to remand is denied.

ORDER

The ALJ's order dated August 19, 2011 is affirmed.

Entered at Salem, Oregon on February 15, 2012

[4] Claimant also seeks remand to the ALJ to consider Dr. Cooper's letter because she was unaware of certain options available to her at or before the hearing. The record establishes, however, that she was provided on multiple occasions with a "Notice of Rights and Procedures in Workers' Compensation Hearings," and that she was informed that she had the right to be represented by an attorney, "at no out-of-pocket cost to [her] for attorney fees." She was further encouraged to obtain legal counsel, given the complexity of workers' compensation law and the evidence necessary to prove her case. At hearing, claimant confirmed that she had read the Notice of Rights and Procedures in Workers' Compensation Hearings, and that she had "no questions" concerning that document. (Tr. 1). She also reiterated that she wished to proceed without counsel. (Tr. 2). Moreover, she obtained and submitted multiple medical record exhibits for admission into the hearing record. (Tr. 1-2). In any event, claimant has not established, as is required for remand, that Dr. Cooper's November 2011 letter was unobtainable at the time of the July 2011 hearing.