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In the Matter of the Compensation of  
**DALIA R. LOPEZ, Claimant**  
WCB Case No. 13-01036  
ORDER ON REVIEW  
Mark Thesing, Claimant Attorneys  
James B Northrop, SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Langer and Lanning.

Claimant requests review of Administrative Law Judge (ALJ) Ogawa's order that: (1) found that her employer did not have knowledge of a work-related injury within 90 days of the work incident; (2) found that claimant had not established good cause for an untimely filed claim; and (3) upheld the SAIF Corporation's denial of her injury claim for lumbar and cervical conditions. On review, the issues are claim filing, good cause, and, potentially, compensability.

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

Claimant, who lives in Woodburn and worked in her employer's Mulino office, used her own car to make home visits to assist her clients. On June 6, 2012, at 3:40 p.m., after having left the office, claimant was involved in a motor vehicle accident (MVA). She was life-flighted to a hospital and then transferred the next day to another facility.

Initially, at the hospital, claimant told her supervisor that she had been on her way home at the time of the MVA. (Tr. 12, 56-57). However, on January 15, 2013, claimant completed an "Incident Analysis Report Form," reporting that she had been driving to a home visit at the time of the MVA. (Ex. 32-1). On that same day, claimant filed a workers' compensation claim. (Ex. 34).

SAIF denied claimant's claim as untimely filed. (Ex. 38-1). SAIF also asserted that claimant's MVA was not work related. (*Id.*) Claimant requested a hearing.

In upholding SAIF's denial, the ALJ determined that the employer did not have knowledge of a work-related injury within 90 days of the accident. Moreover, the ALJ found that claimant had not established "good cause" for failing to give notice of the injury within 90 days of the accident.

On review, claimant contends that, because she frequently engaged in work-related driving, the employer should have known that her June 2012 MVA, which occurred shortly after she left work, may have been compensable and that workers' compensation liability was a possibility. Alternatively, she argues that she had good cause for her failure to give timely notice of her work-related injury because "she was overwhelmed and medicated." For the following reasons, we disagree with claimant's contentions.

We begin by addressing the issue of whether the employer had knowledge of an injury within 90 days of the MVA. Pursuant to ORS 656.265(1), notice of an accident resulting in an injury must be given to the employer by the worker within 90 days of the accident. Failure to give notice within that time frame bars a claim unless notice is given within one year of the accident and the employer had knowledge of the injury within that 90-day period. ORS 656.265(4)(a); *Keller v. SAIF*, 175 Or App 78, 80 (2001), *rev den*, 333 Or 260 (2002); *J. Bradley Ross*, 58 Van Natta 1714 (2006). Furthermore, knowledge of the injury should include enough facts as to lead a reasonable employer to conclude that workers' compensation liability is a possibility and that further investigation is appropriate. *See Argonaut Ins. Co. v. Mock*, 95 Or App 1, 5 (1989); *Barry L. Roley*, 54 Van Natta 580, 586 (2002).

Here, the parties do not dispute that written notice of the claim was provided within one year of claimant's injuries, but more than 90 days after the June 2012 MVA. Consequently, the timeliness of the claim depends on whether the employer had "knowledge of the injury" within the 90-day time period provided by ORS 656.265(1). ORS 656.265(4)(a).

In *Mock*, the court discussed what constitutes "knowledge of the injury" for purposes of ORS 656.265(4):

“[K]nowledge of the injury’ must be sufficient reasonably to meet the purposes of prompt notice of an industrial accident or injury. If an employer is aware that a worker has an injury without having any knowledge of how it occurred in relation to the employment, there is no reason for the employer to investigate or to meet its responsibilities under the Workers’ Compensation Act. Actual knowledge by the employer need not include detailed elements of the occurrence necessary to determine coverage under the act. However, knowledge

of the injury should include enough facts as to lead a reasonable employer to conclude that workers' compensation liability is a possibility and that further investigation is appropriate." 95 Or App at 5.

Thus, consistent with the court's discussion, the employer must have knowledge of not merely an injury, but also of the injury's possible relationship to the employment. *Keller*, 175 Or App at 83; *Ross*, 58 Van Natta at 1716.

Here, claimant relies on the nature of her job, which included frequent work-related driving, to establish that the employer's knowledge of her MVA shortly after leaving work, was sufficient for purposes of ORS 656.265(4). However, the day after her MVA, it is undisputed that claimant told her supervisor that she had been driving home at the time of the accident. (Tr. 12, 56-57; Ex. 11A-1). Accordingly, we agree with the ALJ's reasoning that the employer had no reason to conclude that workers' compensation liability was a possibility. *See Glory Yankauskas*, 43 Van Natta 670, 671 (1991) (the employer's knowledge of the claimant's MVA on her way to work was insufficient to lead a reasonable employer to conclude that workers' compensation liability was a possibility).

We find *Safeway Stores, Inc. v. Angus*, 200 Or App 94, 97 (2005) distinguishable. There, the employer knew that the claimant would be reimbursed for his travel and possibly paid for his travel time for the commute from his home to work during which the MVA occurred. 200 Or App at 476. On the basis of those facts, the court concluded: "A reasonable employer with [that knowledge] would conclude that worker's compensation liability for the accident was a possibility and that an investigation of claimant's accident and injuries was appropriate under the circumstances." *Id.*

In this case, the record does not establish that claimant was to be reimbursed for mileage or paid for her commute from work to home. Although claimant contends that she continuously met with parents at their homes as part of her job, this does not change the substance of the employer's knowledge. Moreover, as previously discussed, one day after her MVA, claimant told her supervisor that she was on her way home from work when it occurred. Under these circumstances, we conclude that a reasonable employer would not have concluded that workers' compensation liability was a possibility and that an investigation of claimant's accident and injuries was appropriate.

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Claimant next maintains that she had “good cause” for failing to notify her employer within the 90-day period because “she was overwhelmed and heavily medicated” as a result of her severe injuries. Reasoning that she was understandably “forgetful and confused,” she asserts that she mistakenly believed that she was on her way home when the accident occurred. Yet, she neither offers, nor does the record contain, medical evidence that persuasively supports her contention. Without such medical evidence, we are unable to conclude that, as a result of her injuries and/or medication, claimant had good cause for not notifying her employer of her injury claim within 90 days of her MVA. *Cf. Brawley A. Lopez*, 60 Van Natta 2928 (2008) (the Board declined to find “extraordinary circumstances” justifying postponement of hearing in absence of medical evidence of the claimant’s alleged incapacitation due to pain).

In summary, we conclude that the employer did not have sufficient knowledge of claimant’s claimed work-related injury for purposes of ORS 656.265(4) and that claimant has not established “good cause” for failing to give timely notice under ORS 656.265(4)(c). Therefore, we find that claimant’s injury claim is untimely. Accordingly, we affirm.

#### ORDER

The ALJ’s order dated June 20, 2013 is affirmed.

Entered at Salem, Oregon on November 12, 2013