
In the Matter of the Compensation of
DUANE CONNOR, Claimant
WCB Case No. 13-06418
ORDER ON REVIEW
Unrepresented Claimant
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Curey and Weddell.

Claimant, *pro se*, requests review of Administrative Law Judge (ALJ) Crummé's order that upheld the SAIF Corporation's denial of claimant's injury claim for a low back condition. With his appellant's brief, claimant submits a "post-ALJ order" letter from his attending physician, as well as additional citations to internet resources.¹ We treat these submissions as a motion for remand to the ALJ for further development of the record. *Juan H. Mendez*, 60 Van Natta 3150 (2008); *Judy A. Britton*, 37 Van Natta 1262 (1985). On review, the issues are remand and compensability.²

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

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. *Id.*; *Compton v. Weyerhaeuser Co.*, 301 Or 641, 646 (1986).

¹ Claimant also alleges a violation of the Health Insurance Portability and Accountability Act (HIPAA) privacy protections because the ALJ's order contained medical information and was mailed to his former employer. First, the Oregon Workers' Compensation Board is not a "covered entity" that is subject to compliance with the act's privacy protections. *See* 45 CFR 160.103. Second, claimant has made a claim for workers' compensation benefits, and requested a hearing regarding SAIF's denial, which requires that an order be issued and sent to all parties in interest. *See* ORS 656.289.

² Inasmuch as claimant is unrepresented, he may wish to consult the Ombudsman for Injured Workers. He 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

Here, there is no explanation why the internet resources and the opinions expressed in Dr. O’Gara’s “post-ALJ order” letter would have been unobtainable with due diligence at the time of the hearing. Additionally, consideration of these submissions would not affect the outcome of our decision.

Specifically, the internet resources present general information about disc pathology, treatment options, and the expected course of healing, which are not specific to claimant’s particular situation. In contrast to the “internet information,” Dr. O’Gara’s letter is specific to claimant’s condition. Nonetheless, while considering claimant’s L3-4 pathology to be a new MRI finding since the date of injury (something that Dr. O’Gara did not previously articulate when he concurred with Dr. Rosenbaum’s opinion), Dr. O’Gara’s letter does not address Dr. Rosenbaum’s opinion that explained that claimant’s symptoms were not consistent with the L3-4 MRI findings. (Ex. 73A-23). In the absence of such an explanation for this apparent change in opinion, Dr. O’Gara’s opinion (even if considered) would be unlikely to change the outcome of this disputed claim. *See Janet Benedict*, 59 Van Natta 2406, 2409 (2007), *aff’d without opinion*, 227 Or App 289 (2009) (medical opinion less persuasive when it did not address contrary opinions); *Kenneth L. Edwards*, 58 Van Natta 487, 488 (2006) (unexplained change of opinion rendered physician’s opinion unpersuasive).

Consequently, based on the aforementioned reasoning, remand for further development of the record is not warranted. Therefore, we turn to the merits of the compensability dispute.

Claimant challenges SAIF’s reliance on Dr. Rosenbaum’s opinion in support of its denial. For the reasons expressed in the ALJ’s order³, we find Dr. Rosenbaum’s opinion persuasive. In any event, even if we did not rely on Dr. Rosenbaum’s opinion, the remainder of the record is not sufficiently objective and persuasive to establish the compensability of claimant’s low back condition.

Accordingly, as supplemented above, the ALJ’s order is affirmed.

ORDER

The ALJ’s order dated February 19, 2015 is affirmed.

Entered at Salem, Oregon on July 28, 2015

³ Claimant reiterates his objection to the ALJ’s consideration of SAIF’s closing arguments. In doing so, he asserts that a December 30, 2014 postmark proves that SAIF did not comply with the ALJ’s filing deadline of December 29, 2014. Yet, SAIF’s counsel’s certificate of service established that the document was mailed on December 29, 2014 and, as such, was timely filed. *See OAR 438-005-0046(1)(j)*. In any event, even if SAIF’s closing argument was not considered, its timely filed respondent’s brief would be reviewed. Therefore, the exclusion of SAIF’s closing argument at the hearing level would not effect our ultimate decision.