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In the Matter of the Compensation of  
**JACK A. STRUBEL, Claimant**  
WCB Case No. 15-02810  
ORDER OF DISMISSAL  
Dunn & Roy PC, Claimant Attorneys  
SAIF Legal, Salem, Defense Attorneys

Reviewing Panel: Members Curey and Lanning.

Claimant, *pro se*,<sup>1</sup> requests review of Administrative Law Judge (ALJ) Bloom's December 1, 2015 order. We have reviewed the request to determine whether we have jurisdiction to consider this appeal. Because the record does not establish that the other parties to this proceeding received timely notice of the request, we dismiss.

FINDINGS OF FACT

The ALJ's order issued December 1, 2015. The order contained a statement explaining the parties' appeal rights, which included a notice that a request for Board 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 Monday, January 4, 2016, the Board received claimant's request for review, which was dated December 29, 2015. The request was mailed by regular mail to the Board in an envelope postmarked December 30, 2015. 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

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<sup>1</sup> Although represented at hearing, claimant is apparently not represented at this time. Because 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

the Board and copies of the request shall be mailed to all parties to the proceeding 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 1, 2015 order was December 31, 2015. Therefore, the final day to perfect an appeal from the ALJ’s order was December 31, 2015. The Board received claimant’s request for review on January 4, 2016. Because the request was not mailed by certified or registered mail, and was actually received by the Board on January 4, 2016 (after expiration of the 30-day appeal period), a presumption arises that the mailing was untimely. OAR 438-005-0046(1)(c). However, this presumption has been rebutted because the envelope containing claimant’s request for review was postmarked December 30, 2015, which is within the 30-day appeal period for timely filing review of the ALJ’s order. Consequently, claimant’s request for review was timely “filed.” *Id.*; 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 had been provided to the other parties. Rather, it appears that the other parties’ first notice of claimant’s request for review will occur when they receive their copy of this order acknowledging the request, which is issuing more than 30 days after the ALJ’s order. *See Juan M. Villanueva*, 61 Van Natta 326 (2009).

Consequently, the record does not establish that the other parties received timely notice of claimant's request for Board review, as required under ORS 656.295(2).<sup>2</sup> *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); 656.295(2)*.

Finally, we acknowledge that claimant has apparently 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 12, 2016

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<sup>2</sup> In the event that claimant can establish that he provided notice of his request for Board review to the other parties to the proceeding within 30 days after the ALJ's December 1, 2015 order, he 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 his submission as soon as possible.