
In the Matter of the Compensation of
ELVIN RODRIGUEZ, Claimant
WCB Case No. 15-06120
ORDER OF DISMISSAL
Gatti Law Firm, Claimant Attorneys
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Lanning and Johnson.

Claimant, *pro se*,¹ has requested review of Administrative Law Judge (ALJ) Poland's August 26, 2016 order. Because the record does not establish that the request was filed with the Board within 30 days of the ALJ's order, we dismiss.

FINDINGS OF FACT

On August 26, 2016, the ALJ issued an "Order Approving Settlement (DCS)," which resolved issues arising from claimant's hearing request regarding a denied claim for cervical, mid back, and low back injuries. The ALJ's order also dismissed the pending hearing request. Copies of the ALJ's order were mailed to claimant, claimant's attorney, the employer, the SAIF Corporation, and SAIF's attorney. The order contained a statement explaining the parties' rights of appeal, including a notice that a request for review must be mailed to the Board and to the other parties to the proceeding within 30 days of the ALJ's order.

On September 26, 2016, SAIF received a copy of a letter from claimant requesting review of the ALJ's August 26, 2016 order. The letter asserted that he had not received his entire share of the settlement proceeds.

¹ Although previously represented, it appears that claimant has requested review without the benefit of legal representation. If claimant is still represented by an attorney, he should contact that attorney regarding this matter. Alternatively, if claimant is no longer represented, 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

On October 4, 2016, SAIF forwarded a copy of claimant's letter to the Board. Receipt of that copy is the Board's first notice of claimant's request for review.

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. ORS 656.289(3). A request for Board review shall be mailed to 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).

"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. OAR 438-005-0046(1)(c). 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. *Id.*

Here, the 30th day after the ALJ's August 26, 2016 order was Sunday, September 25, 2016. Thus, the final day to file an appeal from the ALJ's order was Monday, September 26, 2016. *See Anita L. Clifton*, 43 Van Natta 1921 (1991). Although SAIF received claimant's letter on September 26, 2016, the record does not establish that the request was mailed to the Board within 30 days of the ALJ's August 26, 2016 order. *See Mary J. Freche*, 64 Van Natta 2044 (2012); *Michael N. Lamb*, 55 Van Natta 1569 (2003). Instead, the Board's first receipt of claimant's request for review was October 4, 2016, when it received a copy from SAIF. Thus, claimant's request was "filed" on that date. *See* OAR 438-005-0046(1)(a), (c). Because October 4, 2016 was more than 30 days after the ALJ's August 26, 2016 order, claimant's request for review was untimely filed.²

² In the event that claimant can establish that he mailed his request for review to the Board on or before September 26, 2016, he may submit written information for our consideration. However, we must receive such written information in sufficient time for us to reconsider this matter. Since our authority to reconsider expires within 30 days after the date of this order, any written submission from claimant must be filed as soon as possible.

Failure to timely file the request for review with the Board requires dismissal of the request for review. *See* ORS 656.295(2); *Mosely v. Sacred Heart Hosp.*, 113 Or App 234, 237 (1992); *Catherine C. Cordell*, 54 Van Natta 267, 268 (2002). Therefore, because claimant did not file a request for Board review before the expiration of the 30-day statutory appeal period, we lack jurisdiction to review the ALJ's order. *See* ORS 656.289(3). Accordingly, claimant's request for Board review is dismissed.³

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 clearly stated on the ALJ's order. Moreover, we are not free to relax a jurisdictional requirement. *See Larry L. Kaden*, 53 Van Natta 1479, 1480 (2001); *Alfred F. Puglisi*, 39 Van Natta 310 (1987).

IT IS SO ORDERED.

Entered at Salem, Oregon on October 11, 2016

³ As previously noted, claimant's letter asserts that he has received a payment in an amount that is not consistent with the DCS. Should that be the case, ORS 656.262(12)(a) provides that if a carrier has failed to make a payment in accordance with the requirements specified in a DCS, and if claimant or claimant's attorney has clearly notified the carrier that the payment is past due, the Director may assess a penalty and attorney fee if the required payment is not made within five business days after receipt of the notice by the carrier. Our dismissal of this pending case is an entirely separate matter from the procedures prescribed in ORS 656.262(12)(a). Likewise, our decision would not preclude claimant from filing a hearing request with the Board's Hearings Division, should he wish to seek an order directing SAIF to fully comply with the DCS provisions. Alternatively, he may also file a hearing request should he subsequently wish to have the approved DCS set aside. *See Dorothy J. Carnes*, 57 Van Natta 2003 (2005) (a DCS will be set aside for a showing of extraordinary circumstances, such as misrepresentation, fraud or other illegal activity); *Floyd D. Gatchell*, 48 Van Natta 467 (1996) (to rescind a DCS, the claimant must establish extraordinary circumstances justifying that action).