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In the Matter of the Compensation of  
**LEAH D. HAMILTON, Claimant**  
WCB Case No. 10-05845  
ORDER ON REMAND  
Peter O Hansen, Claimant Attorneys  
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Johnson and Lanning.<sup>1</sup>

This matter is before the Board on remand from the Court of Appeals. *Hamilton v. SAIF*, 275 Or App 978 (2015). The court has reversed our order, *Leah D. Hamilton*, 64 Van Natta 259, *recons*, 64 Van Natta 465 (2012), which found that it was unnecessary to determine whether claimant's hearing request from the SAIF Corporation's denial of her occupational disease claim concerning a left wrist condition was timely filed because the denied claim was not compensable. Reasoning that the Administrative Law Judge's (ALJ's) decision that claimant's hearing request was untimely filed must be decided before the merits of the claim can be considered, the court has remanded.

#### FINDINGS OF FACT

We continue to adopt the ALJ's "Findings of Fact" as supplemented in our Order on Review and as follows.

On April 21, 2010, claimant was diagnosed with work-related left wrist tendonitis and filed a claim for a left wrist condition. (Exs. 1, 2-2). At that time, she lived with two roommates in Portland, Oregon. (I Tr. 17). Around May 12, 2010, SAIF's claim adjuster received an e-mail from the employer indicating that claimant would be moving to California. (I Tr. 6). On May 13, 2010, a SAIF investigator noted claimant's statement that she would be "moving to Corvallis for the rest of June and then to California in July." (Ex. 9-4).

On May 21, 2010, Ms. Zwickert, a nurse practitioner who treated claimant under Dr. Braddock's supervision, recorded that claimant would be "moving out of state in two weeks." (Ex. 10-1). SAIF received this report on May 21, 2010. (*Id.*)

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<sup>1</sup> Members Langer and Biehl initially participated as reviewing panel members. However, because they are no longer members of the Board, Members Johnson and Lanning have participated in this review.

On May 27, 2010, Dr. Woodward, a SAIF-arranged medical examiner, reported that claimant had resigned “because she is moving to California.” (Ex. 14-3). SAIF date-stamped Dr. Woodward’s report on June 14, 2010. (*Id.*)

On June 5 and 6, 2010, claimant moved out of her Portland address. (I Tr. 17). She moved to Corvallis, but did not notify the employer or SAIF of the Corvallis address. (I Tr. 29).

On June 10, 2010, SAIF issued the denial of claimant’s left wrist condition. (Ex. 16-1). The denial “was based in part on an insurer medical examination.” (*Id.*) It addressed the denial to claimant’s Portland address by regular and certified mail. (I Tr. 6; Exs. 16-1, 17). Before issuing its denial, SAIF did not attempt to determine whether claimant had moved to a different address. (I Tr. 6).

The denial issued by regular mail was not returned to SAIF. (I Tr. 7). SAIF received a certified mail receipt, which indicated that the denial had been received by “Ana Brajuha” on June 11, 2010. (Ex. 17). Claimant did not know anyone by that name and, to her knowledge, none of her roommates received any letters from SAIF. (I Tr. 17, 19). Ms. Gammill, who was claimant’s roommate at the Portland address until claimant moved out, also did not know anyone named “Ana Brajuha” and, to her knowledge, no one received any certified mail for claimant at the Portland address on June 11, 2010. (I Tr. 22-23).

Sometime between June 16 to 19, 2010, claimant returned to her former address and retrieved her mail, which did not include SAIF’s denial. (I Tr. 19, 30). On June 21, 2010, she had her mail forwarded to her parents’ home in Corvallis. (I Tr. 18). Around July 21, 2010, claimant moved to North Carolina. (I Tr. 30).

In October 2010, claimant discovered that her claim had been denied. (I Tr. 18). On October 26, 2010, more than 60 days, but less than 180 days, after the June 10, 2010 date of the denial, claimant retained an attorney and requested a hearing. (I Tr. 20).

At the hearing, SAIF asserted that claimant’s hearing request was untimely. (I Tr. 3). Claimant responded that the denial was not mailed to her as required by ORS 656.319(1) or, alternatively, that she had good cause for her failure to timely request a hearing. (*Id.*) The ALJ admitted the exhibits submitted by the parties. (I Tr. 2). Witness testimony was also taken. In closing arguments, the parties argued the merits of the compensability issue, and did not request that the record be reopened for the submission of additional evidence. (II Tr. 3-4, 6-7, 9-10).

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CONCLUSIONS OF LAW AND OPINION

The ALJ dismissed claimant's hearing request, finding that it had been filed more than 60 days after the denial was mailed to claimant and that she had not shown good cause for failing to timely request a hearing. The ALJ did not make findings or conclusions regarding the merits of the compensability issue.

On review, we evaluated the medical evidence and determined that claimant had not proved the compensability of her left wrist condition. *Hamilton*, 64 Van Natta at 262. We reasoned that because the claim was not compensable, we did not need to resolve the timeliness issue. *Id.* at 260. On reconsideration, we explained that our approach was based on the principle that, as a practical matter, the ultimate outcome would be the same. *Hamilton*, 64 Van Natta at 465-66. We affirmed the ALJ's order. *Id.* at 467. Claimant requested judicial review.

The court explained that, under *Sweeden v. City of Eugene*, 95 Or App 577 (1989) and *Southwest Forest Indus. v. Anders*, 299 Or 205 (1985), the timeliness of claimant's hearing request is a jurisdictional issue that must be resolved before the merits of the claim can be addressed. *Hamilton*, 275 Or App at 983; *see also Anders*, 299 Or at 218 (perfecting an appeal within the statutory time limits is the key to jurisdiction); *Sweeden*, 95 Or App at 578 (jurisdiction to address the merits of a claim did not exist where the hearing request was untimely). Because we had not decided the jurisdictional issue, the court concluded that we could not consider the merits of the denied claim. 275 Or App at 983.

The court further noted claimant's contention that, if her hearing request was timely, the claim should be remanded to the ALJ. *Id.* The court commented that because the record was developed to address the merits of the claim, and claimant had not objected to the closing of the record, the record was sufficiently developed for us to reach the merits directly if we determine that we have jurisdiction. *Id.* at 984. Accordingly, the court reversed our decision and remanded the case to us. *Id.*

Consequently, on remand, in accordance with the court's mandate, we first review the jurisdictional issue. As discussed below, we find that claimant's hearing request was timely filed.

A request for hearing on a claim denial must generally be filed within 60 days "after the mailing of the denial to the claimant." ORS 656.319(1)(a). If there was "good cause" for failure to file the hearing request within 60 days, the hearing request may be filed within 180 days of the mailing. ORS 656.319(1)(b).

The “good cause” standard has been equated with the standard of “mistake, inadvertence, surprise, or excusable neglect.” *Sekermestrovich v. SAIF*, 280 Or 723 (1977); *Ryan A. Hammel*, 67 Van Natta 1879 (2015). The burden of establishing good cause falls on the claimant. *Cogswell v. SAIF*, 74 Or App 234, 237 (1985). For the reasons discussed below, assuming that the denial was mailed “to the claimant” on June 10, 2010, we conclude that claimant had “good cause” for failing to request a hearing within 60 days of the June 10, 2010 denial.

A claimant’s failure to file a request for hearing based on lack of actual knowledge of a denial may be sufficient to establish “good case” under appropriate circumstances. *SAIF v. Curtis*, 107 Or App 625, 628 (1991); *see also Guisti Wine Co. v. Adams*, 102 Or App 329, 332 (1990) (the claimant had “good cause” for untimely hearing request because he did not timely receive actual notice of the denial letter despite reasonable diligence). However, there is not “good cause” based on a failure to receive the denial if the claimant had actual notice of the denial. *Snyder v. Interstate Distributor Co.*, 246 Or App 130, 135 (2011) (although the denial was mailed to a former address and not received by the claimant, there was no “good cause” for an untimely hearing request because he had actual notice of the denial within the statutory 60-day period);<sup>2</sup> *Chris M. Moor*, 65 Van Natta 2380, 2381 n 2 (2013) (even if the claimant never actually received the denial letter, for which his roommate had signed, there was not “good cause” for an untimely denial because claimant had received actual notice of the denial from the carrier by e-mail).

Here, claimant moved out of her Portland address before SAIF mailed its June 10, 2010 denial. (I Tr. 17). Although she returned to the address to collect her mail, after the denial had been sent by SAIF and signed for by “Ana Brajuha,” the mail that claimant retrieved did not include the denial. (I Tr. 19, 30). Consequently, she did not actually receive the denial. Further, she did not receive notice of the denial from any other source until October 2010. (I Tr. 18).

We have found that similar circumstances constituted “good cause” for an untimely hearing request. In *James R. Barnett*, 44 Van Natta 834 (1992), the claimant was in the process of moving when the carrier issued its denial. The

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<sup>2</sup> Whether the denial was mailed “to the claimant,” thus triggering the 60-day period for requesting a hearing under ORS 656.319(1)(a), is a different question from whether the claimant had “good cause” to miss the 60-day deadline. *Michael S. Belgarde*, 66 Van Natta 1424, 2028 (2014). The *Snyder* court noted that although the claimant had contended that the mailing of the denial to the wrong address supported “good cause” for an untimely hearing request, he had not argued that the denial was ineffective to trigger the 60-day period. 246 Or App at 134 n 2.

claimant's cousin actually received the denial, but did not give it to the claimant, who did not have actual knowledge of the denial until after the statutory 60-day period had run. Considering the claimant's lack of actual knowledge of the denial under such circumstances, we found good cause for the late hearing request. 44 Van Natta at 835.

As in *Barnett*, claimant was in the process of moving when the carrier issued its denial, and she did not receive either the denial or knowledge of the denial within the statutory 60-day period. Further, claimant returned to collect her mail shortly after the denial was mailed to her former address, and we do not find that her failure to receive the denial resulted from her own lack of due diligence. *Cf. Ivan R. McDaniel, Jr.*, 51 Van Natta 967 (1999) (no "good cause" for untimely hearing request where the claimant's failure to receive the denial resulted from his lack of due diligence in monitoring his mail).

Under such circumstances, we conclude that claimant had "good cause" for her failure to request a hearing within the 60-day period prescribed by ORS 656.319(1)(a). Because claimant filed a hearing request within 180 days of the denial letter, and she has established "good cause" for failing to file the request within 60 days, her hearing request was timely under ORS 656.319(1)(b).

Proceeding to the merits of the compensability issue, we adhere to the analysis of the medical evidence expressed in our Order on Review. Specifically, in light of the opinion of Dr. Woodward, who examined claimant at SAIF's request, we conclude that the opinions of Dr. Braddock, claimant's attending physician, and Ms. Zwickert, a nurse practitioner, do not persuasively establish that claimant's employment conditions were the major contributing cause of her left wrist condition. *See* ORS 656.266(1); ORS 656.802(2)(a). Therefore, claimant has not proven the compensability of her occupational disease claim.

Accordingly, on remand, we vacate the ALJ's July 22, 2011 order, reinstate claimant's hearing request, and uphold SAIF's denial.

**IT IS SO ORDERED.**

Entered at Salem, Oregon on July 25, 2016