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

Reviewing Panel: Members Curey and Lanning.

On January 21, 2016, we withdrew our January 12, 2016 order that had dismissed claimant's request for Board review of Administrative Law Judge (ALJ) Bloom's December 1, 2015 "Order Approving Settlement (DCS)." In dismissing claimant's request for review, we found that the record did not establish that he had timely provided notice of his appeal to the other parties to the proceeding. Thereafter, we withdrew our dismissal order to consider claimant's submission of photocopies of "Certificates of Mailing" and corresponding postage labels (with postmark dates of December 30, 2015), addressed to the SAIF Corporation, its insured, SAIF's counsel, and claimant's former attorney.¹

For the following reasons, we reinstate claimant's request for review and remand.²

First, based on claimant's uncontested submissions, we find that he has established that he mailed copies of his request for review to SAIF, its insured, and SAIF's counsel on December 30, 2015. *See Hector M. Araiza*, 66 Van Natta 1241 (2014) (the claimant's uncontested representations/submissions established that he timely filed a request for review); *Nelda J. Morris*, 44 Van Natta 1820 (1992) (dismissal order withdrawn based on the claimant's submission that proved timely notice of appeal to other party). Under such circumstances, we find that claimant has established that he mailed copies of his request for review to the other parties within 30 days of the ALJ's December 1, 2015 order. Consequently, we hold that timely notice of his appeal was provided to the other

¹ We also granted SAIF an opportunity to respond. Because the time for such a response has expired, we proceed with our reconsideration.

² 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

parties and that we retain jurisdiction to consider this matter. *See* ORS 656.289(3); 656.295(2); *Argonaut Ins. Co. v. King*, 63 Or App 847 (1983). Accordingly, we withdraw our dismissal order and reinstate claimant's request for review.

Second, the issue before us on appeal of the ALJ's order is the propriety of the ALJ's approval of the parties' Disputed Claim Settlement (DCS). We have previously held that where a record regarding any objections to the approved settlement has not been developed, the appropriate remedy is remand for the development of such a record. *See* ORS 656.295(5); *Kimberly Coven*, 66 Van Natta 171 (2014) (remanding a timely appealed order approving a DCS to the ALJ to develop a record from which to determine the circumstances surrounding execution of the parties' settlement); *Jennifer L. DeGregorio*, 64 Van Natta 927 (2012) (same); *Deborah Kolb-Witt*, 62 Van Natta 2107 (2010) (same).

Here, no record exists concerning claimant's contentions regarding the parties' settlement. Because the record is insufficiently developed to resolve the issue arising from claimant's request for review, we conclude that remand is warranted.³ *See Coven*, 66 Van Natta at 172; *DeGregorio*, 64 Van Natta at 928; *Kolb-Witt*, 62 Van Natta at 2108.

Accordingly, in lieu of our previous orders, we vacate the ALJ's December 1, 2015 order insofar as it dismissed claimant's hearing request. This matter is remanded to the Hearings Division.⁴

IT IS SO ORDERED.

Entered at Salem, Oregon on March 18, 2016

³ We acknowledge that a briefing schedule has not been established. However, considering that a record has not been developed and in light of the definitive case law on this subject, we conclude that immediate remand of this matter is the most expeditious way to proceed.

⁴ In remanding this case, we are not vacating the ALJ's approval of the DCS. We are, instead, allowing the parties to develop a record for a ruling on the validity of the DCS. *See Dorothy J. Carnes*, 59 Van Natta 1928 (2007) (a DCS will be set aside for a showing of extraordinary circumstances--must have evidence of 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); *Mary Lou Claypool*, 34 Van Natta 943, 946 (1982) (the grounds for setting aside a DCS are mistake, inadvertence, surprise, excusable neglect, fraud, misrepresentation or other misconduct of an adverse party).