
In the Matter of the Compensation of
WCB Case No. 13-05386
OKSANA Y. ALEKSYK, Claimant
ORDER ON REVIEW
Juliana E Coons PC, Claimant Attorneys
Kenneth R Searce, Defense Attorneys

Reviewing Panel: Members Johnson and Lanning.

The insurer requests review of that portion of Administrative Law Judge (ALJ) Reichers's order that declined to impose sanctions against claimant's former counsel. On review, the issue is sanctions.

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

Claimant's former counsel contended that, in July 2013, he faxed a letter to the insurer intending to file a claim on claimant's behalf with a date of injury of "2012." (Exs. 1, 1A). The insurer denied receipt of the fax transmission.

In October 2013, having received no response from the insurer, claimant's former counsel filed a request for hearing alleging a *de facto* denial. (Exs. 2, 2A-2). Asserting that the claim was time-barred and otherwise deficient, the insurer requested sanctions for a frivolous hearing request. After claimant's request for hearing was withdrawn, the insurer proceeded to hearing, seeking sanctions against claimant's former counsel for a frivolous hearing request.

The ALJ decided that the hearing request was not frivolous and declined to impose sanctions. The insurer contends that the hearing request was not supported by substantial evidence and claimant did not have a reasonable prospect of prevailing. We disagree with the insurer's contention.

ORS 656.390(1) provides that an ALJ *may* impose an appropriate sanction against an attorney who initiates a frivolous request for hearing, board review, appeal or motion. (Emphasis added). "Frivolous" means the matter is not supported by substantial evidence or was initiated without reasonable prospect of prevailing. ORS 656.390(2). Because the statute employs discretionary language, we review the ALJ's ruling for abuse of discretion. *Bi-Mart Corp. v. Allen*, 164 Or App 288, 291 (1999); *Darren K. Tirral*, 58 Van Natta 2030, 2036 (2006). An abuse of discretion occurs when the decision maker exceeds the bounds of its authority. *Allen*, 164 Or App at 291.

We find no abuse of discretion in the ALJ's conclusion that claimant's October 30, 2013 request for hearing was not frivolous. The record supports the ALJ's determination that claimant's former counsel had a good faith belief that claimant's claim had been received by the insurer and was in *de facto* denied status. Accordingly, sanctions are not warranted.

Finally, claimant's counsel asserts entitlement to attorney fees for his services on review. Based on the following reasoning, we are not authorized to grant claimant's request.

Unless specifically authorized by statute, attorney fees may not be awarded. *SAIF v. Allen*, 320 Or 192, 200 (1994); *Forney v. Western States Plywood*, 297 Or 628 (1984); *Stephenson v. Meyer*, 150 Or App 300, 303 (1997); *Gary W. Higgins*, 57 Van Natta 336 (2005). While claimant's counsel has prevailed to the extent that we have affirmed the ALJ's order, his services on review do not concern any of the enumerated benefits or entitlements, procedural or otherwise, which would give rise to an attorney fee award. *See* 656.382(2), (3).

ORDER

The ALJ's order dated September 21, 2015 is affirmed.

Entered at Salem, Oregon on March 10, 2016