
In the Matter of the Compensation of
JAMIE CONNESS, Claimant
WCB Case No. 15-03939
ORDER ON REVIEW
Welch Bruun & Green, Claimant Attorneys
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Lanning and Curey.

Claimant requests review of Administrative Law Judge (ALJ) Jacobson's order that upheld the SAIF Corporation's "noncooperation" denial of her injury claim. On review, the issue is claim processing.

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

The ALJ upheld SAIF's "noncooperation" denial because claimant did not contact SAIF after the issuance of the Workers' Compensation Division's (WCD's) June 12, 2015 suspension order or SAIF's June 16, 2015 warning letter. The ALJ found that claimant had received her mail (which SAIF had mailed to her parents' address at her direction) by as early as May 27, 2015, and had regained access to her cell phone by the beginning of June 2015. Thus, the ALJ concluded that claimant had not fully and completely cooperated with SAIF's investigation, and that her failure to cooperate was not for reasons beyond her control. *See* ORS 656.262(15); *Hopper v. SAIF*, 265 Or App 465, 469 (2014).

On review, claimant contends that she responded to SAIF's inquiries and called no less than three times to make herself available for a statement (twice on May 15, 2015, and then again on June 4, 2015). Consequently, she argues that she fully cooperated with SAIF's investigation. She also asserts that, because she had contacted SAIF on three separate occasions, the only reason her statement was not taken was because the claim adjuster was not available, a circumstance beyond her control. Based on the following reasoning, we affirm.

ORS 656.262(14) provides that injured workers have the duty to cooperate and assist the carrier in the investigation of claims for compensation. "Injured workers shall submit to and shall fully cooperate with personal and telephonic interviews and other formal or informal information gathering techniques." *Id.* A carrier may deny a claim because of the worker's failure to cooperate with an investigation involving an initial claim. ORS 656.262(15).¹

¹ ORS 656.262(15) provides in relevant part:

"If the director finds that a worker fails to reasonably cooperate with an investigation involving an initial claim to establish a compensable injury * * *, the director shall suspend all or part of the

To prevail against a “noncooperation” denial, a claimant must prove one of the following: (1) that she “fully and completely cooperated with the investigation”; (2) that she “failed to cooperate for reasons beyond [her] control”; or (3) that the carrier’s “investigative demands were unreasonable.” See ORS 656.262(15); *Hopper*, 265 Or App at 469; *Stephen D. Schmidt*, 66 Van Natta 2121, 2124 (2014). If the worker has not fully cooperated, the denial “shall” be upheld. ORS 656.262(15).²

Here, the record establishes that SAIF or WCD sent the following separate mailings to claimant at her parents’ address, which was the only address that she had provided to SAIF: (1) the claim adjuster’s May 7, 2015 letter informing claimant that attempts to contact her had been unsuccessful and asking her to call SAIF; (2) the claim adjuster’s May 13, 2015 letter asking claimant to call her to schedule an interview and warning that if she did not cooperate her compensation may be suspended and her claim denied; (3) SAIF’s May 28, 2015 Request for Suspension of Benefits enclosing a copy of its May 7, 2015 and May 13, 2015 warning notices; (4) WCD’s May 29, 2015 notice directing claimant to contact SAIF; (5) WCD’s June 12, 2015 Order Suspending Compensation, stating that the suspension would continue until claimant cooperated with the investigation; and (6) the claim adjuster’s June 16, 2015 letter explaining that claimant had 30 days from WCD’s May 29, 2015 notification to cooperate with the investigation and requesting claimant to contact her immediately to schedule an interview and provide the requested work and/or medical questionnaire. (Exs. 3 through 8).

Claimant had departed her parents’ residence on May 10, 2015. (Tr. 5). By May 27, 2015, she had a new residence. (*Id.*) Claimant did not, however, complete a change of address form with the post office. (Tr. 15). Also, the record

payment of compensation after notice to the worker. If the worker does not cooperate for an additional 30 days after the notice, the insurer or self-insured employer may deny the claim because of the worker’s failure to cooperate.”

² ORS 656.262(15) further provides in relevant part:

“After such a denial, the worker shall not be granted a hearing or other proceeding under this chapter on the merits of the claim unless the worker first requests and establishes at an expedited hearing under ORS 656.291 that the worker fully and completely cooperated with the investigation, that the worker failed to cooperate for reasons beyond the worker’s control or that the investigative demands were unreasonable. If the Administrative Law Judge finds that the worker has not fully cooperated, the Administrative Law Judge shall affirm the denial, and the worker’s claim for injury shall remain denied. If the Administrative Law Judge finds that the worker has cooperated, or that the investigative demands were unreasonable, the Administrative Law Judge shall set aside the denial, order the reinstatement of interim compensation if appropriate and remand the claim to the insurer or self-insured employer to accept or deny the claim.

does not establish that she informed SAIF of her new address. *See Chris M. Moor*, 65 Van Natta 2380, 2381 (2013) (where the carrier mailed its denial to the last address furnished by the claimant, the claimant did not establish “good cause” for his untimely hearing request under ORS 656.319(1)(b)); *cf. Michael S. Belgarde*, 66 Van Natta 1424, 1428 (where the carrier’s denial was not mailed to the address previously provided by the claimant to the carrier it was not mailed “to the claimant,” as contemplated by ORS 656.319(1), and did not trigger the 60-day-appeal period).

Furthermore, by May 30, 2015, claimant’s stepfather had returned her cell phone (Tr. 24), as well as her mail that had been received at her parents’ residence. (Tr. 5). Yet, claimant offers no explanation for why she did not continue to contact SAIF’s claim adjuster, or otherwise cooperate with the investigation, after her June 4, 2015 call.

Also, claimant testified that her cell phone “kicked back on automatically” at the beginning of the month. (Tr. 23). Yet, on June 4, 2015, claimant left a message with the claim adjuster that “she had no phone.” (Tr. 45). In addition, despite receiving WCD’s May 29 notice and June 12 order, claimant did not attempt to contact SAIF after June 4, 2015.

Under these circumstances, we conclude that claimant did not fully and completely cooperate with the investigation and that she has not proven that her failure to cooperate was for reasons beyond her control. *See Joshua McCuen*, 65 Van Natta 1762, 1765-66 (2013) (record did not establish that the claimant fully and completely cooperated with the investigation where he did not respond to four mailings and did not prove that his failure to cooperate was for reasons beyond his control); *Neli Hernandez-Perez*, 60 Van Natta 1670, 1672 (2008) (record did not establish that the claimant fully and completely cooperated with the investigation where she actually received the carrier’s communications regarding her claim, which included notifications and warnings related to suspension/denial of her claim, but did not respond and did not prove that her failure to cooperate was for reasons beyond her control).

In support of her position, claimant relies on *Lisa R. Ensworth*, 58 Van Natta 2330, 2331-32 (2006). The facts of that case, however, are distinguishable. In *Ensworth*, the claimant was in her manager’s office on the prearranged date and time of a mandatory interview. *Id.* at 2330. She waited for the investigator to call for four hours. *Id.* at 2331. During that time, she attempted to call the investigator five times without success. *Id.* Furthermore, the claimant’s testimony was corroborated by her manager. *Id.* Under those circumstances, we found that the

claimant had made every effort to comply with the carrier's requests, and that the investigator's failure to receive messages and the limitations in the carrier's telephone system were circumstances beyond the claimant's control. *Id.* at 2332.

The facts of this case more closely resemble those in *Hernandez-Perez*. In that case, the claimant had completed and returned a questionnaire and made attempts to contact the carrier. 60 Van Natta at 1671. She had also received several of the carrier's and WCD's communications regarding her claim, but asserted that her uncorroborated "pre-suspension" conversation with an unidentified employee of the carrier justified her disregard of subsequent letters from the carrier seeking her participation in the claim investigation. *Id.* at 1672. In that case, we concluded that the claimant had not fully cooperated, nor was her failure to cooperate for reasons beyond her control. *See also Rawley O. Stohr*, 55 Van Natta 4016 (2003) (noncooperation denial upheld because the claimant's conduct represented both a lack of diligence and the failure to cooperate with the carriers' investigation, and was not due to reasons beyond the claimant's control); *Geoff McClellan*, 50 Van Natta 43 (1998) (same).

We acknowledge that claimant left three messages with SAIF's claim adjuster, the last one on June 4, 2015, and that she was homeless and without a phone for a period of time. However, by the beginning of June 2015, she had a new residence and a working cell phone, yet she did not attempt to contact SAIF or WCD after June 4, 2015.³ Considering the specific warnings, admonitions, and requests expressed in SAIF's and WCD's communications, at least some of which claimant concedes that she received, we are not persuaded that she fully cooperated in SAIF's investigation or that her failure to cooperate was for reasons beyond her control.

In sum, ORS 656.262(14) establishes the duty of claimant to cooperate and assist the carrier in the investigation of her claim. Because claimant failed to cooperate with SAIF's reasonable investigation, for reasons within her control, we uphold the noncooperation denial. *See* ORS 656.262(15); *Hopper*, 265 Or App at 471; *McCuen*, 65 Van Natta at 1765-66. Accordingly, we affirm.

ORDER

The ALJ's order dated September 28, 2015 is affirmed.

Entered at Salem, Oregon on March 18, 2016

³ We also note that the claim adjuster's voicemail greeting explained, "If this is an emergency requiring immediate assistance, please press zero now." (Tr. 46). By pressing "0," the call would be transferred to an assistant. (*Id.*)