
In the Matter of the Compensation of
HECTOR R. CONTRERAS, Claimant
WCB Case No. 15-02621
ORDER ON REVIEW
Unrepresented Claimant
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Weddell and Johnson.

Claimant, *pro se*,¹ requests review of that portion of Administrative Law Judge (ALJ) Poland's order that dismissed claimant's request for hearing from the SAIF Corporation's denial of his injury claim for his face/right eye condition. On review, the issue is the timeliness of claimant's hearing request.

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

On October 26, 2006, SAIF issued a denial of claimant's injury claim. (Ex. 4). That same date, SAIF mailed the denial, via certified mail, to claimant at 625 18th St. NE, Salem, Oregon 97301. (Ex. 5). It is undisputed that this was claimant's correct address. (Tr. 4, 11, 16).

Claimant testified that he never received the denial letter and never signed for any certified mailing in October 2006. (Tr. 16, 17, 22, 23). On October 27, 2006, an individual purporting to be claimant signed for delivery of that certified mailing. (Tr. 16-17).

According to claimant, he did not become aware of the denial letter until June 2015. (Tr. 23). On June 10, 2015, he requested a hearing from SAIF's October 26, 2006 denial.

The ALJ dismissed claimant's request for hearing because he had not requested a hearing within 180 days of the mailing date of SAIF's denial letter. ORS 656.319(1).

¹ Because claimant is unrepresented, he may wish to consult the Ombudsman for Insured Workers. He may contact the Ombudsman, free of charge, at 1-800-927-1271, or write to:

On review, claimant contends that he never received the denial and would like to proceed with his case. For the following reasons, we affirm the ALJ's dismissal order.

ORS 656.319(1) provides that where there is an objection by a claimant to denial of a claim, a hearing shall not be granted and the claim shall not be enforceable unless:

“(a) A request for hearing is filed not later than the 60th day after the mailing of the denial to the claimant; or

“(b) The request is filed not later than the 180th day after mailing of the denial and the claimant establishes at a hearing that there was good cause for failure to file the request by the 60th day after mailing of the denial.”

Here, SAIF mailed the denial letter to claimant at his correct address by certified mail on October 26, 2006. It is undisputed that the denial letter was mailed to the correct address, and that someone signed for the certified mail receipt on October 27, 2006. Therefore, proper mailing of the denial under ORS 656.319(1)(a) has been established, and the 60-day time limitation for filing a request for hearing commenced on October 26, 2006. *See Tracie L. Salustro*, 52 Van Natta 1420,1421 (2000) (hearing request properly dismissed, where the denial was properly mailed and the claimant did not timely request a hearing); *cf. Michael S. Belgarde*, 66 Van Natta 1424, 1428 (2014) (where the carrier's denial was not mailed to the address previously provided by the claimant it was not mailed “to the claimant,” as contemplated by ORS 656.319(1), and did not trigger the 60-day appeal period); *Ashley A. Rehfeld*, 62 Van Natta 1722, 1725-26 (2010) (untimely filed hearing request excused when the carrier mailed its denial to the wrong address, the denial was returned by the U.S. Postal Service as undeliverable, and the carrier did not resend the denial to the claimant's “forwarded” address).

Claimant, however, did not request a hearing until June 2015, more than 180 days after the mailing date of the denial letter. Under such circumstances, ORS 656.319(1) provides that a “hearing thereon shall not be granted and the claim shall not be enforceable[.]”

Claimant asserts that his request for hearing was not untimely because he did not receive the denial letter in October 2006, and that someone else must have signed for the certified mailing and did not notify him. Yet, as explained by the

ALJ, receipt of the denial is not required to trigger the time limitation for requesting a hearing. *See Salustro*, 52 Van Natta at 1421-22 (ORS 656.319(1) does not require the claimant's *notification* of the denial). In other words, there is no requirement that a claimant personally receive the denial. *Id.*; *see Kalakay v. City of Eugene*, 92 Or App 699, 700 (1988) (receipt of denial letter by a claimant's roommate at the correct address was sufficient to trigger the time limit for requesting a hearing). To the contrary, ORS 656.319(1)(a) and (1)(b) refer to the "mailing of the denial." (Emphasis added); *see Salustro*, 52 Van Natta at 1421.²

We find no statutory basis for excusing a request for hearing made more than 180 days from the date of the mailing of the denial. *See Wright v. Bekins Moving and Storage Co.*, 97 Or App 45, 48-49, *rev den*, 308 Or 466 (1989) (there is no statutory basis for adding a third category to ORS 656.319 that excuses a request for hearing made after 180 days from the date of mailing, if there are "extenuating circumstances"); *Anderson v. EBI Cos.*, 79 Or App 345, *rev den*, 301 Or 445 (1986) (request for hearing filed more than 180 days after the denial was mailed was untimely).

Accordingly, based on the aforementioned reasoning, the ALJ's order dismissing claimant's request for hearing as untimely filed is affirmed.

ORDER

The ALJ's order dated March 14, 2016 is affirmed.

Entered at Salem, Oregon on September 23, 2016

² Claimant's assertion that he did not receive or have notice of the denial in October 2006 could be considered in determining whether "good cause" existed for the untimely filed hearing request under ORS 656.319(1)(b), if his hearing request had been filed within 180-days of mailing of the denial. *See Leah D. Hamilton*, 68 Van Natta 1100 (2016) (where the claimant filed a hearing request within 180 days of the denial, "good cause" was established for failing to file the request within 60 days given that she did not receive either the denial or knowledge of the denial within the statutory 60-day period because she was in the process of moving); *James R. Barnett*, 44 Van Natta 834 (1992) ("good cause" established for late hearing request filed within 180 days of mailing of the denial where a relative had received the denial at the claimant's correct address and signed the certified mail receipt for him, but did not give it to him). Here, however, claimant did not file a hearing request on the denial until June 2015, nearly nine years after the denial was mailed. Therefore, the 180-day "good cause" exception does not apply, and pursuant to ORS 656.319(1), the hearing must be dismissed.