

In the Matter of the Compensation of
JOSE A. ALEJANDRE-RODRIGUEZ, Claimant

WCB Case No. 15-04301

ORDER ON REVIEW

Lourdes Sanchez PC, Claimant Attorneys
Michael G Bostwick LLC, Defense Attorneys

Reviewing Panel: Members Johnson and Weddell.

Claimant requests review of Administrative Law Judge (ALJ) Sencer's order that: (1) admitted claimant's drug test results; and (2) upheld the self-insured employer's denial of claimant's new/omitted medical condition claim for a lumbar strain condition. On review, the issues are the ALJ's evidentiary ruling and compensability.

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

At the hearing, the ALJ overruled claimant's "relevancy" and "prejudicial" objections and admitted drug test results obtained in the course of his treatment for his accepted work injury. (Exs. 61, 65, 68). On review, claimant argues that the probative value of this evidence is outweighed by the danger of unfair prejudice, and that it was an abuse of discretion for the ALJ to admit these test results, which indicated that he was not taking his prescribed pain medication and was on methamphetamine. (*Id.*) Based on the following reasoning, we disagree.

An ALJ is not bound by common law or statutory rules of evidence and may conduct a hearing in any manner that will achieve substantial justice. ORS 656.283(6). That statute gives the ALJ broad discretion on determinations concerning the admissibility of evidence. *See Brown v. SAIF*, 51 Or App 389, 394 (1981). We review the ALJ's evidentiary ruling for an abuse of discretion. *SAIF v. Kurcin*, 334 Or 399 (2002). In doing so, we consider whether the record supports the ALJ's decision. *Id.* at 406. If the record would support the ALJ's decision, but would also support a different decision, there is no abuse of discretion. *Id.* For the following reasons, we find no abuse of discretion in the ALJ's ruling.

Generally, evidence of a claimant's "bad acts" is not considered, because the prejudicial effect of such evidence tends to outweigh its probative value. *Rose M. LeMasters*, 46 Van Natta 153 (1994), *aff'd without opinion*, 133 Or App 258 (1995). Here, however, the employer disputed claimant's credibility, contending

that his new/omitted condition claim was motivated by financial interest and/or drug-seeking behavior. Thus, the evidence in question was relevant to the credibility issue. Also, as discussed in the ALJ's order, the disputed documents were relevant as to whether Dr. Tajipour's opinion was based on a complete history.

Under such circumstances, the record supports a basis for the admission/consideration of the disputed evidence. See *Carolyn R. Eaton*, 51 Van Natta 1902, 1902-03 (1999); cf. *Richard N. Haag*, 50 Van Natta 268 (1998) (no consideration of false record transactions because not relevant to injury claim); *Robert C. Cook*, 47 Van Natta 723 (1995) (incidents of untruthful statements by the claimant not relevant to the denied claim; therefore, no abuse of discretion by ALJ in not admitting evidence).¹ Consequently, the ALJ's evidentiary rulings does not constitute an abuse of discretion. Accordingly, we affirm.

ORDER

The ALJ's order dated April 6, 2016 is affirmed.

Entered at Salem, Oregon on September 23, 2016

¹ We further note that claimant did not object to Exhibits 64 and 67, which independently confirm that he had drug testing that was negative for his prescribed pain medications.