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In the Matter of the Compensation of  
**JEFFREY R. JOHNSON, Claimant**  
WCB Case No. 00-05792  
ORDER ON REVIEW (REMANDING)  
Willner Wren Hill & Uren, Claimant Attorneys  
Johnson Nyburg & Andersen, Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

Claimant requests review of Administrative Law Judge (ALJ) Crummé's order that dismissed his request for hearing. On review, the issue is the propriety of the dismissal order. We vacate and remand.

FINDINGS OF FACT

Pursuant to claimant's request, a hearing was scheduled on June 28, 2001. Neither claimant nor an attorney representing claimant appeared at the hearing. The insurer moved for dismissal. The ALJ issued an Order of Dismissal on July 5, 2001. The Order of Dismissal contained a notice of the right to request Board review. The order also contained a statement that claimant had the right, within the 30 day appeal period, to request that the ALJ reconsider the order. The notice provided that if claimant could show good cause for his failure to appear at the hearing within the 30-day appeal period, the order would be set aside.

In a letter dated August 3, 2001, claimant's new attorney wrote the ALJ explaining that counsel for the insurer had informed him that an Order of Dismissal had been issued in the case. The letter stated that it was a "formal appeal" of the dismissal. The letter also requested copies of the Notice of Hearing and the dismissal order. The letter further stated that, when the dismissal order and Notice of Hearing were received, a detailed argument for reinstatement of the case would be submitted. The letter was received by the Board on August 6, 2001 and was treated as a request for Board review.<sup>1</sup>

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<sup>1</sup> Here, the 30<sup>th</sup> day after the ALJ's dismissal order fell on Saturday, August 4, 2001. When the last day of the 30-day appeal period falls on a Saturday or a legal holiday, the appeal period runs until the end of the next day that is not a Saturday or legal holiday. See, e.g., *Sandy K. Preuss*, 50 Van Natta 1028 (1998); *James D. Hill*, 49 Van Natta 308 (1997).

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## CONCLUSIONS OF LAW AND OPINION

An ALJ must consider a motion for postponement of a hearing even after an order of dismissal has been issued. *See Olga G. Semeniuk*, 46 Van Natta 152 (1994); *Harold Harris*, 44 Van Natta 468 (1992). We have interpreted a claimant's "post-dismissal order" correspondence after a hearing request has been dismissed for failure to appear as a motion for postponement of the scheduled hearing. *See Marty C. Hayter*, 53 Van Natta 37, 38 (2001). In those cases, where the ALJ did not have an opportunity to rule on the motion, and the motion is filed within the time parameters set forth in the "show cause" portion of the dismissal order, we have remanded to the ALJ for consideration of the motion. *See Teresa Marion*, 50 Van Natta 1165 (1998); *Brent Harper*, 50 Van Natta 499 (1998).

Here, the ALJ issued a combined dismissal order and "show cause" order, as described above, on July 5, 2001.<sup>2</sup> Such a "combined" order was proper, because claimant did not appear at the scheduled hearing and no communication regarding the non-appearance was received. *See Marcelino Ruiz*, 52 Van Natta 946, 948 n1 (2000). On August 6, 2001, claimant's new counsel filed a response to the ALJ's order, which was within the 30-day "show cause" period. Under such circumstances, we interpret claimant's attorney's August 3, 2001 letter as a motion to postpone the June 28, 2001 hearing. *See Michael E. Davis*, 53 Van Natta 1059 (2001); *Brent Harper*, 50 Van Natta at 500.

We may remand a case for further evidence taking if we find that the case has been improperly, incompletely, or otherwise insufficiently developed. *See Bailey v. SAIF*, 296 Or 41, 45 n3 (1983). In order to satisfy this standard, a compelling reason must be shown for remanding. *Brent Harper*, 50 Van Natta at 500.

Based on claimant's counsel's "post-Dismisssal Order" submission (which was filed within the ALJ-prescribed "show-cause" period), we find a compelling reason to remand this case for further development of the incomplete record regarding claimant's postponement request. *See ORS 656.295(5); Michael E. Davis*, 53 Van Natta at 1060.

Accordingly, the ALJ's July 5, 2001 dismissal order is vacated and this matter is remanded to ALJ Crummé. Following further development of claimant's

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<sup>2</sup> In *Marion*, we suggested that the "show cause" period should probably be reduced from 30 to 15 days to avoid confusion and conflict with the 30-day appeal period. 50 Van Natta at 1165, n 1.

explanations for failing to appear at the scheduled hearing (including the insurer's response), the ALJ shall determine whether claimant's non-appearance was justified and constituted extraordinary circumstances beyond his control. This development of the record may be made in any manner that the ALJ deems achieves substantial justice. If the ALJ finds that claimant's explanation satisfies the "extraordinary circumstances" standard, a hearing will then be scheduled for the parties to present evidence on the issues raised by claimant's hearing request. If the ALJ finds that "extraordinary circumstances" have not been presented, the ALJ shall re-issue a dismissal order.

IT IS SO ORDERED.

Entered at Salem, Oregon on May 7, 2002