
In the Matter of the Compensation of
JACK A. MARTINO, Claimant
WCB Case No. 01-06343
ORDER ON REVIEW
Claimant Unrepresented
Sheridan Levine LLP, Defense Attorneys

Reviewing Panel: Members Lowell, Bock, and Phillips Polich. Member Phillips Polich chose not to sign the order.

Claimant, *pro se*, requests review of Administrative Law Judge (ALJ) Stephen Brown's order that dismissed his request for hearing regarding the insurer's denial of his low back injury claim. On review, the issue is propriety of the ALJ's dismissal order.

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

Pursuant to claimant's hearing request, a hearing was scheduled on December 12, 2001. The day before the hearing, the case was reported as settled and the hearing was cancelled. After more than 60 days passed without receipt of settlement documents, a prior ALJ issued a February 14, 2002 Order to Show Cause, giving claimant 15 days to show cause why the case should not be dismissed as abandoned or for unjustified delay. Fifteen days passed without a response to the ALJ's order. ALJ Brown then issued an Order of Dismissal on March 5, 2002.

On March 7, 2002, the Hearings Division received a letter from claimant, stating that he had declined a settlement of the case because not all medical bills would be paid. Claimant included a December 12, 2001 letter from his attorney stating that the case had been reported as settled, but that it could be reset for hearing if claimant did not wish to resolve the case. The attorney advised that claimant could seek alternative counsel to represent him at a rescheduled hearing.

On March 8, 2002, claimant's attorney wrote ALJ Brown, requesting that the dismissal order be withdrawn, that the matter be reset for hearing, and that his office be allowed to withdraw as claimant's counsel.

Turning to the procedural issue of the ALJ's dismissal order, we find that the ALJ properly dismissed the hearing request in light of claimant's failure to respond to the ALJ's show-cause order within 15 days. Neither claimant's nor his counsel's

letters allege that claimant never received the “show-cause” order, nor do they provide an explanation for claimant’s failure to respond to the “show-cause” order. Under such circumstances, we affirm the ALJ's dismissal order because claimant engaged in conduct that resulted in an unjustified delay in the hearing of more than 60 days.¹ See OAR 438-006-0071(1).²

ORDER

The ALJ's order dated March 5, 2002 is affirmed.³

Entered at Salem, Oregon on September 3, 2002

¹ 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. In those cases, where the ALJ did not have an opportunity to rule on the motion, we have remanded to the ALJ for consideration of the motion. See *Randy L. Nott*, 48 Van Natta 1 (1996); *Olga G. Semeniuk*, 46 Van Natta 152 (1994).

Here, an ALJ issued an Order to Show Cause requiring claimant to respond within 15 days. Unlike other cases where we have remanded to ALJs to rule on a "post-dismissal order" request for postponement, claimant has not offered any explanation for his failure to respond to the ALJ's show-cause order within the allotted 15-day period. Under these circumstances, we find no compelling reason to remand to the ALJ for further proceedings. See *Marty C. Hayter*, 53 Van Natta 37 (2001); *Glen A. Harbison*, 50 Van Natta 2157 (1998).

² OAR 438-006-0071(1) provides: "A request for hearing may be dismissed if an Administrative Law Judge finds that the party that requested the hearing has abandoned the request for hearing or has engaged in conduct that has resulted in an unjustified delay in the hearing of more than 60 days."

³ Because it appears that claimant is unrepresented, he may wish to consult the Workers' Compensation Ombudsman, whose job it is to assist injured workers in workers' compensation matters. He may contact the Workers' Compensation Ombudsman at (503) 378-3351 or 1-800-927- 1271 (V/TTY) (within the State of Oregon), or write to:

Workers' Compensation Ombudsman
Dept Of Consumer & Business Services
350 Winter St NE Room 160
Salem OR 97301-3878