
In the Matter of the Compensation of
KAREN V. CHA, Claimant
WCB Case No. 03-00505, 03-00191
ORDER ON REVIEW
Claimant Unrepresented
Scheminske et al, Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

Claimant, *pro se*, requests review of Administrative Law Judge (ALJ) Otto's order that: (1) dismissed claimant's hearing request regarding the self-insured employer's January 2002 denial of claimant's occupational disease claim for right wrist tendonitis and ganglion cyst; and (2) upheld the employer's December 2002 denial of claimant's occupational disease claim for the same condition. On review, the issues are dismissal and compensability.

We adopt and affirm the ALJ's order with the following supplementation.¹

The ALJ upheld the insurer's December 11, 2002 denial of claimant's occupational disease claim. In doing so, the ALJ found that due to claimant's failure to appeal the insurer's January 30, 2002 denial of the same condition, claimant had to prove that working conditions after January 30, 2002 were the major contributing cause of a pathological worsening of her preexisting right wrist tendonitis and ganglion cyst. In finding that claimant had not met her burden of proof, the ALJ found that claimant's current condition was a continuation of her right wrist ganglion and tendonitis that began in October of 2001.

On review, claimant argues that because her medical bills were paid in relation to the first claim, she did not understand the effect of failing to appeal the January 30, 2002 denial. She further argues that because she failed to understand the January 30, 2002 denial, she should be allowed the right to appeal it from the time she understood it. Additionally, she argues her condition is work related and

¹ Inasmuch as claimant is unrepresented, she may wish to consult the Workers' Compensation Ombudsman, whose job it is to assist injured workers in such matters. She may contact the Workers' Compensation Ombudsman, free of charge, at 1-800-927-1271, or write to:

WORKERS' COMPENSATION OMBUDSMAN
DEPT OF CONSUMER & BUSINESS SERVICES
PO BOX 14480
SALEM, OR 97309-0405

that the denial of her right wrist condition should be set aside. For the following reasons, we disagree with claimant's arguments.

Claimant has the burden of proving that the dismissal of her request for hearing appealing the January 30, 2002 denial was not appropriate. *See e.g., Michael G. Brown*, 55 Van Natta 1 (2003). For the following reasons, we agree with the ALJ's decision to dismiss claimant's hearing request.

At hearing, claimant's counsel conceded that the January 30, 2002 denial was not timely appealed. (Tr. 3). Although claimant argues that she did not understand the consequences of not appealing the first denial, claimant did not raise this "good cause" issue at hearing. Therefore, we are not inclined to consider it for the first time on appeal. *See Stevenson v. Blue Cross*, 108 Or App 247, 252 (1991). However, even if we were to consider claimant's argument, we would reach the same result.

A hearing request must be filed within 60 days after claimant is notified of a denial. ORS 656.319(1)(a). A request filed more than 60 days but not less than 180 days after notification of denial is valid if claimant establishes good cause for failure to file within 60 days. ORS 656.319(1)(b). Claimant has the burden to establish good cause for failure to file timely. *Hempel v. SAIF*, 100 Or App 68 (1990). The test for determining if good cause exists has been equated to the standard of "mistake, inadvertence, surprise or excusable neglect" recognized under ORCP 71B(1). *Anderson v. Publishers Paper Co.*, 78 Or App 513, 517, *rev den* 301 Or 666 (1986); *see also Brown v. EBI Companies*, 289 Or 455 (1980).

Finally, assuming, without deciding, that claimant's misunderstanding of the meaning of the denial did constitute good cause, claimant had 180 days to file her request for hearing regarding the January 30, 2002 denial.² However, claimant did not submit any correspondence requesting a hearing until January 2003 (Hearing[']s File), well past the 180 day limit.

² In many circumstances "misunderstanding" the meaning of or the importance of appealing a denial has been found *not* to be good cause for failure to timely file a request for hearing from a denial. *See, e.g., Edward J. Andrews*, 51 Van Natta 226, *recon* 51 Van Natta 377 (1999) (the claimant's mistaken belief that the carrier would rescind its denial and accept his claim once he attended an independent medical examination did not constitute "good cause"); *Roger Eli*, 47 Van Natta 1938 (1995) (the claimant's erroneous belief a claim would be covered by one of two carriers did not establish good cause where record did not indicate that either carrier misled the claimant); *Bertha Vega*, 45 Van Natta 378 (1993) (confusion regarding the contents of a denial does not, without reasonable diligence, constitute good cause).

ORDER

The ALJ's order dated April 24, 2003 is affirmed.

Entered at Salem, Oregon on September 24, 2003