
In the Matter of the Compensation of
GHEORGHE MORAR, Claimant
WCB Case No. 03-04099
ORDER ON REVIEW (REMANDING)
Unrepresented Claimant
Johnson Nyburg & Andersen, Defense Attorneys

Reviewing Panel: Members Lowell and Biehl

Claimant, *pro se*, requests review of Administrative Law Judge (ALJ) Davis' order that dismissed claimant's hearing request from the insurer's denial of a left triangular fibrocartilage complex tear. On review, the issue is the propriety of the ALJ's dismissal order. We vacate and remand.

FINDINGS OF FACT

On June 4, 2003, claimant, through counsel, requested a hearing regarding the insurer's May 21, 2003 denial. The hearing was scheduled for September 3, 2003, but was postponed and rescheduled for January 2, 2004. However, on December 19, 2003, claimant's attorney wrote the Hearings Division and advised that he had lost contact with claimant and therefore was withdrawing as his attorney. Claimant's attorney stated that claimant's "last known address" was "7905 NE Mason, Portland, Oregon 97218."

In light of the above letter, the January 2004 hearing was postponed and rescheduled for August 26, 2004. The hearing notice, however, was sent to the address of claimant's former attorney, not the address provided in the December 19, 2003 letter. The notice was returned unclaimed.

The August 26, 2004 hearing convened as scheduled. Neither claimant nor any representative was present. The insurer moved for dismissal of the hearing request, which the ALJ granted, finding that claimant had abandoned his request for hearing. The ALJ advised that the dismissal order could be set aside if claimant could show "good cause" for his failure to appear at the hearing.

On September 23, 2004, claimant's former attorney requested abatement of the ALJ's order so that claimant could submit an explanation for his failure to attend the hearing. The ALJ granted the request and issued an order abating the August 27, 2004 dismissal order.

On September 30, 2004, claimant provided an explanation of why he did not attend the August 2004 hearing. Claimant explained that he was homeless for a month, but was able to obtain a permanent mailing address in March 2004 and to arrange for the forwarding of mail from the Northeast Mason address to the new address. Claimant stated that he did not receive any forwarded letters until he received the ALJ's dismissal order.

After considering claimant's explanation, the ALJ reinstated his dismissal order. In doing so, the ALJ reasoned that, while claimant obtained a permanent mailing address in March 2004, he did not advise the Board or his former attorney of his address. If he had done so, the ALJ reasoned that the hearing notice could have been sent to an address where claimant received his mail. Thus, the ALJ concluded that claimant did not show good cause for his failure to attend the August 2004 hearing. Claimant requested Board review of the ALJ's order.

CONCLUSIONS OF LAW AND OPINION

Under OAR 438-006-0071(2), when a party requesting a hearing fails to appear, the ALJ shall dismiss the request for hearing as abandoned unless "extraordinary circumstances" justify postponement or continuance of the hearing. Here, finding that claimant had abandoned his hearing request, the ALJ initially issued a dismissal order, but allowed claimant to show "good cause" for his failure to appear, as described above. 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 n 1 (2000). Claimant's former counsel timely filed a request for reconsideration of the ALJ's order. Under such circumstances, we interpret claimant's counsel's reconsideration request as a motion to postpone the previously scheduled hearing. *See Michael E. Davis*, 53 Van Natta 1059 (2001); *Brent Harper*, 50 Van Natta 499, 500 (1998).

The question before us is whether "extraordinary circumstances" exist for the postponement of claimant's scheduled hearing. In other words, the determinative issue is whether extraordinary circumstances beyond claimant's control justified the failure to appear at the scheduled hearing. We conclude that the record supports such a conclusion.

Although claimant provided for forwarding of his mail from the Northeast Mason address that his counsel described as the "last known address," the June 2004 hearing notice issued by the Hearings Division was not mailed to that

address.¹ The record, therefore, does not establish that the hearing notice was mailed to claimant's "last known address." See *Mary A. Hoyer*, 54 Van Natta 1662 (2002) (remanding for scheduling of a new hearing where the hearing notice was not sent to the "last known address"). Under such circumstances, we find that postponement and rescheduling of the hearing is appropriate.

In conclusion, "extraordinary circumstances" justifying postponement of the hearing have been demonstrated under OAR 438-006-0071(2). Under these circumstances, claimant's motion for postponement should be granted. Accordingly, we vacate the ALJ's dismissal order and remand this case for the rescheduling of a hearing.

ORDER

The ALJ's order dated August 27, 2004, as reinstated on November 4, 2004, is vacated. The matter is remanded to ALJ Davis for further proceedings consistent with this order.

Entered at Salem, Oregon on March 29, 2005

¹ Although a previous hearing notice sent to that address had been returned by the post office, it remained claimant's last known address, and according to claimant, he did receive the Order of Dismissal sent to that "last known address."