

In the Matter of the Compensation of
SOCORRO SANCHEZ, Claimant

WCB Case No. 07-06188

ORDER ON REVIEW

Hooton Wold & Okrent LLP, Claimant Attorneys
Bruce A Bornholdt, SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Langer and Biehl.

Claimant requests review of Administrative Law Judge (ALJ) Crummé's order that affirmed an Order on Reconsideration that determined that the claim was prematurely closed. On review, the issues are premature claim closure and, potentially, extent of permanent disability (impairment and work disability).

In affirming the reconsideration order, the ALJ reasoned that the SAIF Corporation lacked sufficient information to determine permanent disability when it closed the claim on July 7, 2007. Citing *Judith Brown*, 56 Van Natta 2213, *on recons*, 56 Van Natta 2628 (2004), the ALJ reasoned that a "post-closure" report from the attending physician, Dr. Sedgewick, did not provide "sufficient information" because, while it was available when the August 23, 2007 reconsideration order issued, it did not exist at claim closure. Therefore, the ALJ determined that, under *Brown*, the "post-closure" report could not satisfy the requirement of "sufficient information."¹

On review, claimant argues that *Brown* is distinguishable because, unlike that case, there were impairment findings before the Appellate Review Unit (ARU) sufficient to determine permanent disability. Claimant's argument notwithstanding, we agree with the ALJ's application of *Brown*.

In *Brown*, the carrier argued that, in determining whether there was "sufficient information" to determine permanent impairment when it closed the claim on January 29, 2002, we should rely on a July 26, 2003 medical arbiters' report. According to the carrier in *Brown*, at the time the ALJ and the Board ruled on the case, there was "sufficient information" to determine impairment.

¹ Pursuant to ORS 656.268(1), an insurer or self-insured employer is required to close the worker's claim and determine the extent of the worker's permanent disability when the worker has become medically stationary and there is sufficient information to determine permanent disability.

We rejected the carrier's argument in *Brown* about the appropriate time frame for deciding whether there was "sufficient information" to determine permanent impairment. We emphasized that the July 26, 2003 medical arbiters' report did not exist at the time of the January 29, 2002 closure. We reasoned that the carrier's argument that we should rely on the July 26, 2003 medical arbiters' report in order to evaluate whether there was "sufficient information" to determine permanent impairment was contrary to the statutory scheme.

Moreover, in *Brown*, the July 26, 2003 medical arbiters' report was admitted at hearing, although it was not prepared in time for use in the April 2, 2002 reconsideration proceeding. The ALJ relied on that report in rating the claimant's permanent disability. The issue on review, however, did not involve rating the claimant's permanent impairment. Rather, we noted, the issue before us was the procedural propriety of the employer's actions in closing the claim: whether the carrier had "sufficient information" to determine permanent impairment at the time it closed the claim on January 29, 2002. 56 Van Natta at 2630.

Consistent with the *Brown* rationale, the appropriate time for determining whether sufficient information exists to close a claim is when the claim is closed, not during the reconsideration proceedings. Granted the report in this case, unlike the one in *Brown*, was available for use in the reconsideration proceeding. Nevertheless, this distinction is not significant given our reasoning in *Brown* that the determinative point for the existence of "sufficient information" is when the claim is closed. Because we agree with the ALJ's reasoning that SAIF lacked sufficient information to close the claim when it issued its closure notice, it follows that the claim was prematurely closed.

ORDER

The ALJ's order dated April 9, 2008 is affirmed.

Entered at Salem, Oregon on September 30, 2008