

In the Matter of the Compensation of
MICHAEL J. KIVETT, Claimant

WCB Case No. 09-00404

ORDER ON REVIEW

Welch Bruun & Green, Claimant Attorneys
James B Northrop, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Lowell and Biehl.

Claimant requests review of Administrative Law Judge (ALJ) Poland's order that: (1) declined to admit claimant's "post-hearing" submission of a "pre-hearing" civil court summary judgment; and (2) upheld the SAIF Corporation's denial of claimant's injury claim for cervical strain and L3-4 broad disc bulge conditions. On review, the issues are evidence and course and scope of employment.

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

Pursuant to ORS 656.283(7), an ALJ is not bound by common law or statutory rules of evidence or procedure or by technical or formal rules of procedure, and may conduct a hearing in any manner that will achieve substantial justice. An ALJ has broad discretion regarding the admissibility of evidence. *Brown . SAIF*, 51 Or App 389, 394 (1981). We review the ALJ's procedural ruling for abuse of discretion. *SAIF v. Kurcin*, 334 Or 399, 405 (2002); *Ernesto R. Armenta*, 61 Van Natta 535, 536 (2009) (where an ALJ left the record open for a specific purpose, ALJ was within discretion to exclude proposed evidence which exceeded that specific purpose).

Here, at the conclusion of the April 2009 hearing, the ALJ kept the record open for, among other things, a deposition and additional medical reports. Some 11 months later, in March 2010, before closure of the continued hearing, claimant submitted for admission into the record a copy of a July 2009 civil court summary judgment. The ALJ granted SAIF's motion to exclude the proposed exhibit. Reasoning that the submission of the proposed exhibit had been untimely, the ALJ concluded that substantial justice was best served by excluding the document.

¹ Claimant also argues that a decision upholding the employer's denial deprives him of his constitutional right to a remedy. Because he did not raise a constitutional argument at the hearing level, we decline to consider it on review. *See Lynn A. Woolfe*, 58 Van Natta 2802, 2808 (2006).

Asserting that his claim was harmed by the exclusion of the proposed exhibit, claimant contends that substantial justice was not achieved by the ALJ's evidentiary ruling. Nonetheless, as reflected in *Clifford L. Conradi*, 46 Van Natta 854, 857 (1994), and its progeny (including the *Arementa* decision), when an ALJ leaves a record open for a specific purpose, it is within the ALJ's discretion to exclude subsequent submissions of proposed evidence that do not comport with that purpose. Thus, because the civil court summary judgment was not related to the purpose for which the record was held open, there was no abuse of discretion in the ALJ's exclusion of that proposed exhibit.²

ORDER

The ALJ's order dated April 13, 2009 is affirmed.

Entered at Salem, Oregon on December 30, 2010

² In any event, the ALJ considered the civil court summary judgment for purposes of analyzing claimant's closing argument. For the reasons expressed by the ALJ, we agree that the summary judgment involving different parties and a different evidentiary record has no preclusive effect on this workers' compensation proceeding.