
In the Matter of the Compensation of
PATTY S. COXEFF, Claimant
WCB Case No. 11-02695, 10-05872
ORDER OF DISMISSAL
Unrepresented Claimant
Randy Rice AAL, Defense Attorneys

Reviewing Panel: Members Lowell and Biehl.

Claimant, *pro se*,¹ requests review of Administrative Law Judge (ALJ) Sencer's November 9, 2011 order. The self-insured employer has moved to dismiss claimant's request, contending that she neglected to provide notice of her appeal to all parties to the proceeding within 30 days of the ALJ's order. *See* ORS 656.289(3); ORS 656.295(2). Because the record does not establish that the other parties received timely notice of the request, we dismiss.

FINDINGS OF FACT

On November 9, 2011, the ALJ issued an order upholding the employer's denials of claimant's aggravation and new/omitted medical condition claims. The order contained a statement explaining the parties' appeal rights, which included a notice that a request for Board review must be mailed to the Board with copies to the other parties to the proceeding within 30 days following the issuance of the order.

On December 8, 2011, the Board received claimant's facsimile transmission (FAX), requesting review of the ALJ's order. Her request did not indicate that copies had been provided to the other parties to the proceeding.

On December 12, 2011, the Board mailed a letter to the parties, acknowledging receipt of claimant's request for Board review. Thereafter, the employer moved for dismissal, contending that its first notice of claimant's request occurred on its December 13, 2011 receipt of the Board's acknowledgment letter.

¹ Because claimant is unrepresented, she may wish to consult the Ombudsman for Injured Workers. She may contact the Ombudsman, free of charge, at 1-800-927-1271, or write to:

DEPT OF CONSUMER & BUSINESS SERVICES
OMBUDSMAN FOR INJURED WORKERS
PO BOX 14480
SALEM OR 97309-0405

CONCLUSIONS OF LAW AND OPINION

An ALJ's order is final unless, within 30 days after the date on which a copy of the order is mailed to the parties, one of the parties requests Board review under ORS 656.295. ORS 656.289(3). Requests for Board review shall be mailed to the Board and copies of the request shall be mailed to all parties to the proceeding before the ALJ. ORS 656.295(2).

Compliance with ORS 656.295 requires that statutory notice of the request be mailed or actual notice be received within the statutory period. *Argonaut Ins. Co. v. King*, 63 Or App 847, 852 (1983). Failure to timely file the request for review with the Board requires dismissal of the request for review. *See* ORS 656.295(2); *Mosley v. Sacred Heart Hosp.*, 113 Or App 234, 237 (1992); *Catherine C. Cordell*, 54 Van Natta 267, 268 (2002).

“Filing” means the physical delivery of a thing to any permanently staffed office of the Board, or the date of mailing. OAR 438-005-0046(1)(a). Timely filing and service of a copy of a filed document may be accomplished by submitting a FAX, provided the request and service of the request satisfies the requirements for filing by FAX. OAR 438-005-0046(1)(g), (2).

Here, the 30th day after the ALJ's November 9, 2011 order was December 9, 2011. Consequently, the final day to perfect an appeal from the ALJ's order was Friday, December 9, 2011. Inasmuch as claimant's request for review was received by the Board by means of FAX on December 8, 2011, it was timely filed. *See* ORS 656.289(3); ORS 656.295(2); OAR 438-005-0046(1)(g).

However, the record fails to establish that the other parties to the proceeding before the ALJ were provided with a copy, or received actual knowledge, of claimant's request for review within the statutory 30-day period. Rather, the record indicates that the employer's first notice occurred on December 13, 2011, when it and its counsel received a copy of the Board's December 12, 2011 letter acknowledging claimant's request for review. Because December 13, 2011 is more than 30 days after the ALJ's November 9, 2011 order, such notice is untimely. *Debra A. Hergert*, 48 Van Natta 1052 (1996); *John E. Bafford*, 48 Van Natta 513 (1996).

Under such circumstances, we conclude that notice of claimant's request was not provided to the other parties within 30 days after the ALJ's November 9,

2011 order.² Consequently, we lack jurisdiction to review the ALJ's order, which has become final by operation of law. *See* ORS 656.289(3); ORS 656.295(2).

Finally, we are mindful that claimant has apparently requested review without benefit of legal representation. We further realize that an unrepresented party is not expected to be familiar with administrative and procedural requirements of the Workers' Compensation Law. However, instructions for requesting review were clearly stated in the ALJ's order. Moreover, we are not free to relax a jurisdictional requirement. *Alfred F. Puglisi*, 39 Van Natta 310 (1987); *Julio P. Lopez*, 38 Van Natta 862 (1986).

Accordingly, the request for Board review is dismissed.

IT IS SO ORDERED.

Entered at Salem, Oregon on January 6, 2012

² In the event that claimant can establish that she provided notice of her request for Board review to the employer (or its counsel) within 30 days of the ALJ's November 9, 2011 order, she may submit written information for our consideration. However, we must receive such written information in sufficient time to permit us to reconsider this matter. Since our authority to consider this order expires within 30 days after the date of this order, claimant must file her written submission as soon as possible. Claimant is further advised that any document she submits to the Board for its review must be simultaneously mailed to the employer's attorney.