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In the Matter of the Compensation of  
**LEAH D. HAMILTON, Claimant**  
WCB Case No. 10-05845  
**ORDER ON RECONSIDERATION**  
Hansen Malagon Lawyers, Claimant Attorneys  
Holly O'Dell, SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Langer and Biehl.

On February 7, 2012, we modified an Administrative Law Judge's (ALJ's) order that dismissed claimant's hearing request from the SAIF Corporation's denial of claimant's injury claim regarding her left wrist condition as untimely. Reasoning that the claim was not compensable (even if the hearing request was considered timely), we upheld SAIF's denial. Asserting that we are obligated to resolve the "timeliness/good cause" issue, claimant seeks reconsideration of our decision, reinstatement of her hearing request, and remand to the ALJ for an order addressing the merits of the claim.

Claimant argues that we must reverse the ALJ's dismissal order and find her hearing request timely before the compensability issue can be considered. Moreover, she contends that the case must be remanded to the ALJ for a decision on the merits of her claim because, to do otherwise, would deny her right to a hearing on the issue of compensability. After considering claimant's contentions, we offer the following explanation and clarification for our decision.

Without question, the consideration of the compensability of a denied claim is based on the principle that any procedural hurdle to that claim has been overcome. Thus, as a general rule, we fully address and resolve procedural issues such as the timeliness of a hearing request before proceeding to substantive matters. *See Joe Ann Aguilar*, 43 Van Natta 246 (1990) (because Board agreed with then-Referee's finding that the claimant lacked "good cause" for an untimely filed hearing request, it declined to address the Referee's alternative conclusion that the denied claim was not compensable). Nonetheless, in this particular situation, we found it unnecessary to reach a decision concerning the procedural issues of whether SAIF's denial was properly issued and whether claimant's hearing request was timely filed.<sup>1</sup> This finding was based on the principle that,

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<sup>1</sup> Consistent with this rationale, we likewise did not adopt the ALJ's "Ultimate Findings of Fact," which found that the hearing request was untimely filed. On further reflection, we continue to decline to adopt such a "finding." Nonetheless, we do so because it is not a "fact" (ultimate or otherwise), but rather a "Conclusion of Law," which has been expressed in the ALJ's opinion that we have affirmed for the reasons expressed above.

as a practical matter, the ultimate outcome would be the same. In other words, whether resolved on a procedural or substantive basis, claimant would not be entitled to compensation under either analysis. Thus, in this particular instance (when resolving the challenging procedural issue would not be determinative regarding claimant's eventual entitlement to benefits), we declined to address the "timeliness/good cause" issues. Such reasoning is not unprecedented. *See Margarita Garcia*, 51 Van Natta 1918 (1999) (Board found it unnecessary to address "good cause/jurisdictional" issue, when it was not persuaded that the claimant had established the compensability of the denied claim).

Furthermore, our consideration of the compensability issue is consistent with our appellate review authority. We reason as follows.

The hearing record includes both testimonial and documentary evidence regarding the disputed issues. Those issues were not limited to the "timeliness/good cause" questions, but also involved the compensability of the denied claim. Moreover, following the hearing and the submission of a "post-hearing" deposition from a physician, the parties presented recorded closing arguments. As with the evidentiary phase of the proceeding, those arguments were not restricted to the procedural "timeliness/good cause" issues, but also included the compensability issue. In presenting her arguments, claimant neither objected to the closure of the evidentiary record nor suggested that the record was inadequately developed. To the contrary, her counsel discussed the medical evidence and concluded that "medical causation" of her claim had been established.

In addition, in advancing her arguments on appeal of the ALJ's order, claimant did not suggest that we were incapable of resolving the compensability issue or that the record was in any way insufficient to render such a determination. To the contrary, claimant concluded as follows in her appellant's and reply briefs: "On the merits, claimant has met her burden of proof and the denial should be reversed." "The failure to timely appeal is excusable. The claim is compensable. The denial should be set aside."

Finally, in conducting our appellate review of the ALJ's order, we review *de novo*. In doing so, we consider the same documentary record that was presented to the ALJ. Furthermore, claimant raised no objection to the record and our consideration of the merits of her claim until we announced our opinion.<sup>2</sup>

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<sup>2</sup> In its respondent's brief, SAIF indicated that, if claimant's hearing request was reinstated, the case should be remanded to the ALJ for a determination regarding the merits of the claim. Nevertheless, in doing so, SAIF provided neither points, authorities, nor reasoning for that proposition. In any event, for the reasons expressed above, we conclude that remand is not justified.

Such circumstances do not support a conclusion that this case has been improperly, incompletely, or otherwise insufficiently developed. *See* ORS 656.295(5); *compare Kathryn W. Manificier*, 55 Van Natta 664, 667 (2003) (when parties agreed to proceed with hearing solely on “good cause” issue and Board subsequently reversed the ALJ’s determination that “good cause” had not been established, remand was appropriate for the ALJ to reconvene a hearing to litigate the merits of the denied claim). As such, remand to the ALJ for further evidence taking, correction, or other necessary action is not warranted. *Id.*

Consequently, we adhere to our previous reasoning, with the following exception. Considering that we did not conclusively resolve the “timeliness/good cause” issue, our order should not have stated that the ALJ’s order was “modified” and that SAIF’s denial was upheld. Rather, consistent with our conclusion that it was unnecessary to determine whether the hearing request should be reinstated, our order should have stated that the ALJ’s order was affirmed (without any reference to upholding SAIF’s denial). By this reference, we correct our prior order.

Accordingly, we withdraw our February 7 order. On reconsideration, as supplemented and corrected, we republish our February 7 order. The parties’ rights of appeal shall begin to run from the date of this order.

**IT IS SO ORDERED.**

Entered at Salem, Oregon on March 6, 2012