
In The Matter of the Compensation of
BRANDON J. MOYE, Claimant
WCB Case No. 12-01818
ORDER ON REVIEW
Unrepresented Claimant
Sather Byerly & Holloway, Defense Attorneys

Reviewing Panel: Members Weddell and Lowell.

Claimant, *pro se*,¹ requests review of Administrative Law Judge (ALJ) Fisher's order that: (1) found his claim for conditions arising from a July 28, 2010 injury was precluded; and (2) dismissed claimant's hearing request. On review, the issues are the propriety of the ALJ's dismissal order, preclusion, and, potentially, compensability.² We affirm in part and modify in part.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact."

CONCLUSIONS OF LAW AND OPINION

We agree with the ALJ's conclusion that claimant's November 2011 Disputed Claim Settlement (DCS) precluded his current new/omitted medical condition claims. As the ALJ found, the medical evidence establishes that claimant's currently claimed conditions are the same as those resolved in the previous DCS.

¹ Inasmuch as claimant is unrepresented, he may wish to consult the Ombudsman for Injured Workers. He 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

² Claimant has also submitted a physician's letter that was not presented at the hearing. We treat claimant's submission as a motion to remand to the ALJ for the taking of further evidence. See ORS 656.295(5); *Juan H. Mendez*, 60 Van Natta 3150 (2008); *Judy A. Britton*, 37 Van Natta 1262 (1985). Remand is appropriate if we find a compelling reason for doing so, which includes a determination that the new evidence is reasonably likely to affect the outcome of the case. See *SAIF v. Avery*, 167 Or App 327, 333 (2000). Here, remand is not warranted because consideration of the submitted medical report is not reasonably likely to affect the ultimate determination in this case; *i.e.*, that claimant's current claim is precluded by a prior Disputed Claim Settlement.

Nonetheless, the determination that claimant's current claim is precluded does not result in a dismissal of his hearing request. Because he raised a question regarding a matter concerning a claim (*i.e.*, the compensability of specific conditions as allegedly related to his July 2010 work injury, and/or previously accepted conditions), he was statutorily entitled to request a hearing. *See* ORS 656.283(1). A determination that those claimed conditions are not compensable does not culminate in the dismissal of his hearing request. Rather, the decision is that he is not entitled to the compensation he seeks. *See Gary L. Christensen, 62 Van Natta 2582, recons, 62 Van Natta 2771 (2010).*

Accordingly, we modify that portion of the ALJ's order that dismissed claimant's hearing request. Instead, we reinstate his hearing request and find that he is not entitled to the relief requested.

ORDER

The ALJ's order dated October 22, 2012, as reconsidered on December 3, 2012, is affirmed in part and modified in part. In lieu of the ALJ's dismissal of claimant's hearing request, the hearing request is reinstated. Claimant's request for relief is denied. The remainder of the ALJ's order is affirmed.

Entered at Salem, Oregon on April 3, 2013