In the Matter of the Compensation of
EDWARD A. SCOTT, Claimant
WCB Case No. 14-02658
ORDER ON RECONSIDERATION
Carney Buckley Hays & Marsh, Claimant Attorneys
Gress & Clark LLC, Defense Attorneys

Reviewing Panel: Members Lanning and Johnson.

On May 20, 2015, we withdrew our April 29, 2015 order that found that the self-insured employer's Modified Notice of Acceptance was null and void. We took this action to consider claimant's motion for reconsideration. Having received the self-insured employer's response and claimant's reply, we now proceed with our reconsideration.

In reaching our conclusion, we found that the employer's February 4, 2014 Modified Notice of Acceptance was not valid because the employer had not "furnished" the notice to claimant, and because the employer had withdrawn the Modified Notice of Acceptance before claimant's attorney received it. On reconsideration, claimant contends that our decision was based on an argument that was not raised by the parties at hearing or on review. He also asserts that our decision conflicts with case precedent, which advances the proposition that an acceptance is effective when executed and does not require notification to claimant.

As a threshold matter, we disagree that our decision was based on a legal issue not raised by the parties. The "issue" presented for our resolution was the validity of the employer's Modified Notice of Acceptance. That is the issue addressed in our order. While the analysis employed in reaching our decision was different from that advanced by the parties, there is no prohibition against our applying such an analysis, particularly when the parties have now had an opportunity to address our reasoning. *See Rebeca F. Ramos*, 62 Van Natta 1323, 1325 (2010) (considering alternative "legal theories," as opposed to new issues, where adverse party not prejudiced); *Daniel V. Covert*, 52 Van Natta 1635 (2000) (same).

Our reasoning is premised on at least two undisputed components. First, the February 4, 2014 Modified Notice of Acceptance was not directly furnished to claimant as required under ORS 656.262(6)(a). Second, even assuming that claimant's counsel was expressly authorized to accept service of the Modified

Notice of Acceptance, the employer notified claimant's counsel before receipt of his copy of the notice that it had been issued in error and should be disregarded. Based on those two undisputed facts, we held that the Modified Notice of Acceptance was not valid.

Citing *SAIF v. Tull*, 113 Or App 449 (1992), *Nancy V. Storey*, 41 Van Natta 1951 (1989), and *Patrick A. Getty*, 42 Van Natta 1197 (1990), claimant contends that an acceptance is effective immediately when executed and does not require that notice of that acceptance be furnished to claimant. However, those cases stand for the proposition that, whether an acceptance has occurred and, if so, the scope of that acceptance, are questions of fact based on the specific record. Here, based on our review of this particular record, we have concluded that no acceptance occurred.

In reaching our conclusion, we emphasize that our holding is limited to the facts in this particular situation. Thus, it is unnecessary to address claimant's hypotheticals.

Accordingly, on reconsideration, as supplemented herein, we adhere to and republish our April 29, 2015 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 June 18, 2015