

In the Matter of the Compensation of  
**FORDYCE B. TOWNES II, Claimant**  
WCB Case No. 12-06580  
ORDER ON REVIEW  
Unrepresented Claimant  
Sather Byerly & Holloway, Defense Attorneys

Reviewing Panel: Members Lanning and Johnson.

Claimant, *pro se*, requests review of Administrative Law Judge (ALJ) Lipton's order that upheld the self-insured employer's denial of his injury/occupational disease claim for chemical exposure. With his brief, claimant submitted several documents that were not admitted into the record at hearing. We treat this submission as a motion for remand for the taking of additional evidence. *Juan H. Mendez*, 60 Van Natta 3150 (2008); *Judy A. Britton*, 37 Van Natta 1262 (1985). On review, the issues are motion to remand and compensability.

We adopt and affirm the ALJ's order with the following supplementation.<sup>1</sup>

Our review is limited to the record developed at hearing. ORS 656.295(5). We may only remand to the ALJ should we find that the hearings record has been "improperly, incompletely or otherwise insufficiently developed." *Id.* Remand is appropriate upon a showing of good cause or other compelling basis. *Kienow's Food Stores v. Lyster*, 79 Or App 416 (1986). To merit remand for consideration of additional evidence, it must clearly be shown that the evidence was not obtainable with due diligence at the time of the hearing and that the evidence is reasonably likely to affect the outcome of the case. *Compton v. Weyerhaeuser Co.*, 301 Or 641, 646 (1986); *Metro Rigging v. Tallent*, 94 Or App 245, 249 (1988).

Here, the documents submitted by claimant predate the June 30, 2014 hearing (the record was closed on September 26, 2014).<sup>2</sup> There has been no

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<sup>1</sup> 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

<sup>2</sup> The documents include a signed statement from a co-worker (dated before the hearing), e-mails from other individuals (who did not testify at the hearing), medical reports (which are dated before the hearing and are already present in the record), a "Material Safety Data Sheet" (which is dated before the hearing), copies of letters between his former counsel and the employer's attorney (which were exchanged before the hearing date), and a copy of his 801 claim form (which is already in the record).

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showing that the evidence was unobtainable with due diligence at the time of the hearing. In addition, the evidence is not likely to affect the outcome of the case. Accordingly, we find no compelling reason to remand.

Finally, we agree with the ALJ's evaluation of the medical evidence and reasoning and conclusion regarding the compensability issue.<sup>3</sup>

### ORDER

The ALJ's order dated October 20, 2014 is affirmed.

Entered at Salem, Oregon on April 9, 2015

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<sup>3</sup> On review, it appears that claimant is frustrated with the legal representation he received from his former attorney. However, we lack the authority to address such issues. If claimant has a disagreement with his former attorney's representation, that disagreement may be a matter for another forum to resolve. *See David M. Williams*, 63 Van Natta 346 (23011); *Joseph M. Deprizio*, 60 Van Natta 488 (2008); *Becky L. Degenhardt*, 54 Van Natta 1189 (2002) (the Board is not the appropriate forum for determining the adequacy of counsel).