
In the Matter of the Compensation of
STEVEN L. ROSE, Claimant
WCB Case No. 15-04605
ORDER OF DISMISSAL
R Adian Martin, Claimant Attorneys
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Weddell and Johnson.

Claimant, *pro se*,¹ has requested review of Administrative Law Judge (ALJ) Lipton's January 28, 2016 order.² Because the record does not establish that either the Board or the other parties to this proceeding received timely notice of the request for review within 30 days of the ALJ's order, we dismiss.

FINDINGS OF FACT

On January 28, 2016, the ALJ issued an Order of Dismissal stating that claimant's request for hearing had been withdrawn. Copies of the ALJ's order were mailed to claimant, his former attorney, the employer, and the SAIF Corporation. The ALJ's order included a statement explaining the parties' rights of appeal, including a notice that a request for review must be mailed to the Board and to the other parties to the proceeding within the 30-day appeal period.

On April 12, 2016, the Board received claimant's request for review, which was transmitted via e-mail from claimant to the Board's designated e-mail address for electronic filing of a request for review. The request did not indicate that copies had been provided to the other parties to the proceeding.

¹ Although represented at hearing, claimant is unrepresented on review. Because claimant is now 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:

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

² Because it does not appear that the SAIF Corporation received a copy of claimant's request, a copy has been included with SAIF's copy of this order.

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. *See* 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 to the other parties to the proceeding be mailed, or actual notice received, within the statutory period. *Argonaut Ins. Co. v. King*, 63 Or App 847, 852 (1983). Failure to timely file and serve all parties with the request for Board review requires dismissal of the request for review. *See* ORS 656.289(3); *Mosley v. Sacred Heart Hosp.*, 113 Or App 234, 237 (1992); *Zurich Ins. Co. v. Diversified Risk Mgmt*, 300 Or 47, 51 (1985).

“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). Pursuant to OAR 438-005-0046(1)(f), a party may also file a request for Board review of an ALJ's order by means of e-mail. To do so, the e-mail must be directed to the following address: “request.wcb@oregon.gov.”

Here, the thirtieth day after the ALJ's January 28, 2016 order was February 27, 2016. Therefore, the final day to perfect a timely appeal of the ALJ's order was February 27, 2016. Claimant's request was received via e-mail at the Board's designated “e-mail” address on April 12, 2016. Thus, claimant's request was “filed” with the Board on that date. *See* OAR 438-005-0046(1)(a), (f). Inasmuch as April 12, 2016 was more than 30 days after the ALJ's order, claimant's request was untimely filed. *See* ORS 656.289(3).

Moreover, claimant's request did not indicate that copies had been provided to the other parties. The record does not indicate that the other parties to the proceeding were provided with a copy, or received actual knowledge, of claimant's request for review on or before February 27, 2016. Consequently, the record does not establish that the other parties received timely notice of claimant's request for Board review, as required under ORS 656.295(2). *See Shannon E. Jenkins*, 50 Van Natta 802 (1998); *John E. Bafford*, 48 Van Natta 513 (1996).

Under such circumstances, notice of claimant's request was neither filed with the Board nor provided to the other parties within 30 days after the ALJ's January 28, 2016 order. Therefore, we lack jurisdiction to review the ALJ's order. *See* ORS 656.289(3); *Mosley*, 113 Or App at 237; *Zurich Ins. Co.*, 300 Or at 51. Accordingly, claimant's request for Board review is dismissed.³

Finally, we acknowledge that claimant has requested review without the 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 on the ALJ's order. Moreover, we are not free to relax a jurisdictional requirement. *See Michael N. Lamb*, 55 Van Natta 1569 (2003); *Larry L. Kaden*, 53 Van Natta 1479, 1480 (2001).

IT IS SO ORDERED.

Entered at Salem, Oregon on April 26, 2016

³ Claimant's request asserts that SAIF is responsible for several conditions arising from his work injury. To the extent that claimant believes that SAIF is responsible for other conditions other than those that have been previously accepted or denied, he may file a new/omitted medical condition claim at any time. ORS 656.262(6)(d); ORS 656.267. To do so, he must file a clear request seeking formal written acceptance of the new/omitted medical condition(s) with SAIF. ORS 656.267(1). If claimant is dissatisfied with SAIF's response to such a claim, he may then file a hearing request with the Board.