
In the Matter of the Compensation of
LAWRENCE M. LHOMMEDIEU, Claimant
WCB Case No. 14-02795
ORDER OF DISMISSAL
Unrepresented Claimant
SAIF Legal, Salem, Defense Attorneys

Reviewing Panel: Members Weddell and Curey.

On June 16, 2016, the Board received claimant's June 15, 2016 e-mail submission to the SAIF Corporation, which was forwarded to us by SAIF as a possible misdirected request for review of an Administrative Law Judge's (ALJ's) May 17, 2016 order.¹ *See* OAR 438-005-0075 ("If a claimant sends a request for hearing or Board review to the employer or insurer, the employer or insurer shall promptly forward the request to the Board."). We have reviewed claimant's submission to determine whether we have jurisdiction to consider the matter. Because we conclude that a request for Board review has not been filed, we dismiss.²

FINDINGS OF FACT

On May 17, 2016, the ALJ issued an Order of Dismissal that dismissed claimant's request for hearing for his failure to appear at the scheduled hearing. Copies of the ALJ's order were mailed to claimant, the employer, the SAIF Corporation and SAIF's attorney. The order contained a statement explaining the parties' rights of appeal, including a notice that a request for review must be mailed to the Board within 30 days of the ALJ's order and that copies of the request for review must be mailed to the other parties within the 30-day appeal period. The ALJ's order also gave claimant 15 days from the date of his order to request abatement and reconsideration based on a showing of "good cause" that prevented his attendance at hearing.

¹ We have also received from claimant another copy of the same materials that SAIF has forwarded to the Board. Claimant's submission (which, based on the postmark date on the envelope, was mailed to us on June 15) was expressly directed to the "Own Motion Unit."

² Because claimant is not represented, 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

There is no indication that claimant responded to any portion of the ALJ's order ("good cause" or otherwise) or sought reconsideration of the ALJ's dismissal order.

Instead, on June 15, 2016, claimant sent an e-mail to SAIF, with an attached document labeled "ownmotion.pdf." The attachment, consisting of 14 pages, contained a header stating "Before the Workers Compensation Board of Oregon, State of Oregon, Board – Own Motion," and the word "pleading" at the bottom of each page. The document requested that the Board "make findings of facts in this case," and consisted of claimant's recounting of the procedural history, information regarding the employer's actions in the matter, and discussion regarding the mediation process.

SAIF forwarded the Board a copy of claimant's e-mail and submission, which was received by the Board on June 16, 2016. In addition, on June 17, we received another copy of claimant's submission directly from him. That submission was mailed to the Board's "Own Motion Unit," in an envelope with a postmark date of June 15, 2016.

CONCLUSIONS OF LAW AND OPINION

The issue before us is whether claimant's submission constitutes a "request" for review of the ALJ's dismissal order. Based on the following reasoning, we conclude that a "request" for review has not been filed.

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. 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 be mailed or actual notice be received within the statutory period. *Argonaut Ins. Co. v. King*, 63 Or App 847, 852 (1983).

The request for review by the Board of an ALJ's order need only state that the party requests a review of the order. ORS 656.295(1). While no "magic words" are required for compliance with the aforementioned requirement, the statute contemplates a modicum of information sufficient to clearly identify a document as a party's request for Board review of an ALJ's order. *Gerardo V. Soto, Jr.*, 35 Van Natta 1801, 1803 (1983). Where a party has not expressly requested Board review, but the intention to do so is both clear and unmistakable, we have concluded that we have jurisdiction pursuant to ORS 656.295. See *Rochelle M. Gordon*, 40 Van Natta 1808 (1988).

Here, claimant's e-mail submission was received by SAIF and the Board within 30 days of the ALJ's May 17, 2016 order. However, claimant's submission neither requested Board review nor expressed dissatisfaction with the ALJ's order. Considering such circumstances, we conclude that claimant's submission did not evince a clear and unmistakable intent to request Board review.³ See *Andrey G. Glizin*, 59 Van Natta 2745 (2007); *David L. Tucker*, 53 Van Natta 683, 684 (2001). Consequently, we hold that claimant did not request Board review of the ALJ's May 17, 2016 Order of Dismissal within the statutorily required 30-day appeal period. ORS 656.295(1).

Inasmuch as the ALJ's order has not been appealed, stayed, withdrawn, modified, or republished within 30 days of its issuance, it has become final by operation of law. ORS 656.289(3); *Farmers Ins. Group v. SAIF*, 301 Or 612, 619 (1986); *Int'l Paper Co. v. Wright*, 80 Or App 444 (1986); *Fischer v. SAIF*, 76 Or App 656, 659 (1986).

Finally, we are mindful that claimant has apparently taken these actions without 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. Yet, 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).

Accordingly, this matter is dismissed.

IT IS SO ORDERED.

Entered at Salem, Oregon on June 23, 2016

³ As further confirmed by claimant's submission directly to the Board's Own Motion Unit, he is seeking "Own Motion" relief. That request will be addressed by separate correspondence from the Own Motion Unit.