

In the Matter of the Compensation of
MICHAEL TILLERY, Claimant
WCB Case No. 15-01425
ORDER ON REVIEW
Unrepresented Claimant
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Johnson and Weddell.

Claimant, *pro se*,¹ requests review of Administrative Law Judge (ALJ) Riechers's order that: (1) found that claimant's left middle finger condition claim was not prematurely closed; and (2) affirmed an Order on Reconsideration that awarded 5 percent permanent impairment. On review, the issues are premature closure and permanent disability (work disability).²

We adopt and affirm the ALJ's order with the following supplementation.

In finding that the December 17, 2014 Notice of Closure was not premature, the ALJ reasoned that the opinion of Dr. Hutson, claimant's attending physician, established that claimant's left middle finger condition was medically stationary by November 19, 2014, without permanent impairment. Further, the ALJ concluded that Dr. Hutson had released claimant to unrestricted work duty effective on December 3, 2014.

¹ Although claimant was represented at the time he requested review of the ALJ's order, he is no longer represented. Because claimant is currently 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 submitted pictures of his finger (Ex. 3), which were not admitted into evidence at the hearing. We treat such a submission as a motion to remand to the ALJ. See *Kathryn D. McMahon*, 62 Van Natta 2866 (2010). Our review is limited to the record developed during the reconsideration proceeding. ORS 656.283(6) (evidence on an issue regarding a Notice of Closure not submitted at the reconsideration is not admissible). Neither the ALJ nor the Board may consider evidence outside the reconsideration record. See *Sandi Jones*, 59 Van Natta 44 (2007).

Here, the photographs of claimant's injured middle finger were not included in the reconsideration record that was admitted at the hearing level. In any event, consideration of the pictures would not affect the outcome of our decision. Under these circumstances, we deny the motion to remand. To the extent that claimant references matters not contained in the reconsideration record, such information cannot be considered.

On review, claimant contends that the record does not establish that he was released to regular work. Accordingly, he contends that he is entitled to an award of work disability. For the following reasons, we disagree.

Claimant is entitled only to impairment, but not work disability, if he “has been released to regular work by the attending physician or nurse practitioner authorized to provide compensable medical services under ORS 656.245 or has returned to regular work at the job held at the time of this injury.” ORS 656.214(2)(a).

Regarding the work disability issue, we agree with the ALJ’s conclusion that claimant has not demonstrated an error in the reconsideration process. *Marvin Wood Prods. v. Callow*, 171 Or App 175, 183 (2000) (the party challenging an Order on Reconsideration bears the burden of establishing error in the reconsideration process). Our reasoning follows.

On December 3, 2014, Dr. Hutson reported that claimant was “released to unrestricted duty with regards [] to his employment” for both his “at-injury” employer, as well as the other employer for which he was working when he was injured. (Ex. 9). Dr. Hutson’s work release is unequivocal in that it specifically includes both of the jobs held by claimant on the date of his work injury.

Under such circumstances, this record does not support claimant’s contention that his attending physician’s ultimate release to regular work did not extend to all of his jobs. As such, on this record, we are not persuaded that the reconsideration order (which did not award work disability) was erroneous. *Callow*, 171 Or App at 183; ORS 656.214(2)(a). Consequently, we affirm.

ORDER

The ALJ’s order dated November 2, 2015 is affirmed.

Entered at Salem, Oregon on April 20, 2016