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In the Matter of the Compensation of  
**ADALID A. GUTIERREZ, Claimant**  
WCB Case No. 15-02553  
ORDER ON REVIEW  
Adams Hill & Hess, Claimant Attorneys  
Law Offices of Kathryn R Morton, Defense Attorneys

Reviewing Panel: Members Curey and Lanning.

Claimant requests review of Administrative Law Judge (ALJ) Brown's order that: (1) found that claimant had untimely filed a request for reconsideration from a Notice of Closure; and (2) affirmed a Workers' Compensation Division's (WCD's) Order Denying Request for Reconsideration. On review, the issue is timely filing.<sup>1</sup>

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

In denying claimant's reconsideration request as untimely filed, the Appellate Review Unit (ARU) differentiated between the "postage stamp" used by claimant's attorney's office, and "the postmark from the United States Postal Service [USPS]." (Ex. 10). The ARU concluded that the "postmark" was dated "April 18, 2015," and established that the request for reconsideration was not timely mailed. OAR 436-030-0005(8);<sup>2</sup> *see, e.g., Bonnie L. Garber*, 61 Van Natta 2305 (2009) (where the ARU did not receive an envelope from the claimant's attorney, the claimant was unable to use a postmark as proof of mailing in compliance with OAR 436-030-0005(8); therefore, the record did not establish that the reconsideration request was mailed or delivered to the ARU within the statutory appeal period).

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<sup>1</sup> Claimant has submitted two internet articles regarding the processing of mail in Salem. Noting that these materials were not admitted as evidence at the hearing, the insurer moves to strike these documents. Because this submission is not information that we can take administrative notice, we grant the insurer's motion. *See Groshong v. Montgomery Ward Co.*, 73 Or App 403 (1985) (Board may take administrative notice of facts "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."); *Michael A. Crause*, 49 Van Natta 1022 (1997) (Board declined to take administrative notice of a submission from the DSM-IV manual because it was taken from a source not subject to confrontation and cross-examination); *Richard H. Olsen*, 41 Van Natta 1300 (1989) (Board did not have authority to consider the most recent version of a medical treatise where the evidence was not admitted at the hearing and not a part of the record). Furthermore, even if we considered the submission, it would not alter our determination that the ALJ's decision was appropriate.

<sup>2</sup> That rule defines the "Mailed or Mailing Date" for purposes of determining timeliness under the rules as "the date a document is postmarked. \* \* \*."

After conducting our review, we find no error in the ARU's interpretation of its own rule. *See Godinez v. SAIF*, 269 Or App 578, 582 (2015) (deferring to the ARU's interpretation of its administrative rule where the interpretation was not inconsistent with the wording of the rule or any other source of law). Accordingly, we affirm.

ORDER

The ALJ's order dated November 19, 2015 is affirmed.

Entered at Salem, Oregon on May 11, 2016