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In the Matter of the Compensation of  
**PAIGE T. MANIBUSAN, Claimant**  
WCB Case No. 15-05355  
ORDER ON REVIEW  
Unrepresented Claimant  
Cummins Goodman et al, Defense Attorneys

Reviewing Panel: Members Curey and Weddell.

Claimant, *pro se*,<sup>1</sup> requests review of Administrative Law Judge (ALJ) Riechers's order that upheld the self-insured employer's denial of claimant's new/omitted medical condition claim for post-concussion syndrome. Claimant has submitted medical records not presented at the hearing level. We treat such a submission as a motion to 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 remand, evidence, and compensability.

We adopt and affirm the ALJ's order with the following supplementation to address the remand and evidentiary issues.<sup>2</sup>

Claimant sustained a compensable injury in July 2015. (Exs. 59, 72). The employer accepted a "forehead abrasion." (Ex. 72).

In November 2015, the employer denied claimant's new/omitted medical condition claim for post-concussion syndrome. (Ex. 77). Claimant timely requested a hearing.

In February 2016, an ALJ wrote a letter to claimant, stating that she had received a postponement of her scheduled hearing to retain legal counsel. (Hearing record). The letter indicated that claimant might not receive another postponement on such grounds in the future. (*Id.*)

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<sup>1</sup> Because claimant is unrepresented, she may wish to consult the Ombudsman for Injured Workers. She 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> We adopt and affirm the ALJ's order concerning the compensability issue.

In May 2016, an ALJ wrote another letter to claimant, detailing that claimant had received another postponement of her scheduled hearing to retain legal counsel. (*Id.*) She was again provided notice that she might not receive another postponement on this basis in the future. (*Id.*)

At the rescheduled hearing, claimant offered written statements of lay witnesses to support her claim, but those witnesses did not appear to testify. (Tr. 22-23). The ALJ declined to admit the documents (labeled as proposed Exhibits 89A and 91) into the record because they were not in the form of sworn affidavits and the individuals were not present to testify. (Tr. 23). The documents were included in the record as an “offer of proof.” (*Id.*)

Reasoning that there was no persuasive physician’s opinion supporting the existence of the claimed condition, or persuasive medical evidence to establish that claimant’s July 2015 work injury was a material contributing cause of the need for treatment/disability for the claimed condition, the ALJ upheld the employer’s denial.

On review, claimant contends that her post-concussion syndrome condition is compensably related to her July 2015 work injury. In addition, she asserts that she was “stuck representing” herself at the hearing, and that certain proposed exhibits that were eventually submitted as an “offer of proof” should have been considered by the ALJ. Finally, she submits additional medical records for our review, which we interpret as a request for remand.<sup>3</sup>

Our review is limited to the record developed by the ALJ. ORS 656.295(5). However, we may remand to the ALJ for further development of the record if we find that the case has been improperly, incompletely, or otherwise insufficiently developed. *Id.* There must be a compelling reason for remand to the ALJ for the taking of additional evidence. *SAIF v. Avery*, 167 Or App 327, 333 (2000). A compelling reason exists when the new evidence: (1) concerns disability; (2) was not obtainable at the time of the hearing; and (3) is reasonably likely to affect the outcome of the case. *Id.*; *Compton v. Weyerhaeuser Co.*, 301 Or 641, 646 (1986).

Here, claimant has not provided an explanation as to why she could not have obtained the medical records submitted on review for the hearing. Because she has not shown that the proffered evidence was unavailable at the time of the hearing,

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<sup>3</sup> In addition, claimant contends that Exhibits A and B were not admitted into evidence. Yet, those exhibits were admitted at the hearing. (Tr. 22-23, 33).

we do not find a compelling reason for remand. Moreover, because our review is limited to the record developed by the ALJ, we have not considered those medical records on review.

Furthermore, claimant contends that the “offer of proof” concerning written lay witness statements (the documents labeled as proposed Exhibits 89A and 91) is relevant to our *de novo* review. We interpret claimant’s position as a challenge to the ALJ’s evidentiary ruling.

ALJs are not bound by common law or statutory rules of evidence or by technical or formal rules of procedure and may conduct a hearing in any manner that will achieve substantial justice. ORS 656.283(6). We review the ALJ’s evidentiary ruling for abuse of discretion. *SAIF v. Kurcin*, 334 Or 399, 409 (2002). The ALJ is given broad discretion on determinations concerning the admissibility of evidence. *See, e.g., Brown v. SAIF*, 51 Or App 389, 394 (1991) (the ALJ’s decision to admit or exclude evidence is limited only by the consideration that the hearing as a whole achieve substantial justice).

Here, the issue is the compensability of claimant’s new/omitted medical condition claim for post-concussion syndrome. In declining to consider the excluded lay witness statements that were eventually retained in the file as an “offer of proof,” the ALJ reasoned that they were *inadmissible* because the lay witnesses were not available to testify in person and the statements were not in the form of sworn affidavits. Under such circumstances, we find no abuse of discretion in the ALJ’s ruling. (*See* OAR 438-007-0022(1) (testimony of lay witnesses shall be taken by personal appearance of the witness before the ALJ), (2) (when a lay witness is unable to attend the hearing due to extraordinary circumstances beyond the control of the party offering the testimony and the testimony of the witness cannot be taken by deposition, the ALJ may allow testimony to be taken in any manner that will afford substantial justice and insure a complete and accurate record of all examinations and testimony). Accordingly, we have not considered the excluded written statements on review.

Claimant further argues that she was “stuck representing herself” when her alleged legal counsel failed to appear. (Tr. 2-5; hearing record). We interpret her statement as a contention that her hearing should have been continued. Yet, when asked whether she would like to move forward or, alternatively, to request

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a continuance, she expressly chose to proceed with the hearing. (Tr. 6, 8-10). Under such circumstances, we find no abuse of discretion in the ALJ's decision to proceed with the hearing.<sup>4</sup>

Accordingly, based on the aforementioned reasoning, as well as that expressed in the ALJ's order, we conclude that the claimed new/omitted medical condition claim is not compensable. Thus, we affirm.

ORDER

The ALJ's order dated September 28, 2016 is affirmed.

Entered at Salem, Oregon on March 10, 2017

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<sup>4</sup> In doing so, we note that claimant had previously received two postponements, both of which granted her an opportunity to secure legal counsel. In addition, each continuance was accompanied by an ALJ warning that future postponements based on similar grounds were unlikely to be granted.