

In the Matter of the Compensation of  
**PAMELA L. STRATTON, Claimant**  
WCB Case No. 18-02990, 18-01521  
ORDER ON REVIEW  
Unrepresented Claimant  
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Lanning and Curey.

Claimant, *pro se*,<sup>1</sup> requests review of that portion of Administrative Law Judge (ALJ) Riechers's order that upheld the SAIF Corporation's denials of claimant's injury/occupational disease claim for right hand MRSA cellulitis and contact dermatitis. With her appellant's brief, claimant has submitted documents, some of which were not presented/admitted at the hearing. Because our review is limited to evidence admitted at the hearing, we treat this submission as a motion for remand to the ALJ. *See* ORS 656.295(c); *Judy A. Britton*, 37 Van Natta 1262 (1985). On review, the issues are remand, evidence, and compensability.<sup>2</sup>

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

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<sup>1</sup> Because claimant is unrepresented, she may wish to consult the Ombudsman for Inured Workers. She may contact the Ombudsman, free of charge, at 1-800-927-1271, or write to:

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

<sup>2</sup> We may remand to the ALJ if we find that the case has been improperly, incompletely or otherwise insufficiently developed. ORS 656.295(5). 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, most of the documents submitted by claimant with her request for review and appellant's brief predate the October 4, 2018, hearing. There is no explanation why these materials were not submitted for inclusion of the record at the time of the hearing when claimant had the opportunity to do so. (Tr. 4-11). In addition, some of the exhibits are either undated, incomplete, or post date the hearing, including additional OSHA materials, email exchanges, and medical cost summaries. We also note that the ALJ provided an "offer of proof," which included a partially submitted report referencing some information regarding her employer and OSHA, in addition to a log of work related injuries and illnesses for her employer. (Hearing file AA & BB; Tr. 49-53, 118-120, 142). Yet, none of this information concerns the compensability of the workers' compensation claim and this submission is unlikely to change the outcome of this dispute. Thus, under these particular circumstances, we find no compelling reason to remand. Consequently, remand is not warranted.

## Evidentiary Ruling

The ALJ excluded claimant's post hearing May 29, 2018, OSHA letter mailed to the Hearings Division. In doing so, the ALJ reasoned that, even assuming that claimant intended to seek admission of those materials (as there was no specific request to take such action), such information was excluded because she had not previously requested a continuance.

On review, claimant contends that the OSHA letter should be considered, because she had mailed it to the Board and SAIF before and after the October 4, 2018, hearing. 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, claimant mailed various records, including an OSHA letter dated May 29, 2018, to the ALJ before the October 4, 2018, hearing without a request for their inclusion in the record. (Hearing record). That letter was received by the Hearings Division on July 23, 2018. (*Id.*) At hearing, a discussion took place in which claimant represented which records she wanted admitted into the record. (Tr. 4-11). She did not specifically seek the admission of the OSHA letter. (*Id.*) After the presentation of closing arguments immediately following the hearing, the ALJ closed the record. (O&O, p. 1). On October 9, 2018 (following the hearing), the ALJ again received a copy of that May 29, 2018, OSHA letter. (Hearing record). However, again, claimant did not request that the information be admitted into the record. Under such circumstances, we find no abuse of discretion in the ALJ's exclusion of such information from the record.

## Compensability

In upholding SAIF's denial, the ALJ found the opinions of Dr. Jin, an infectious disease specialist, and Dr. Kelly, a family medicine physician, insufficient to establish the compensability of the claimed conditions.<sup>3</sup>

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<sup>3</sup> The ALJ found, and the record supports, that an "injury" analysis applies to claimant's claim.

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On review, claimant disagrees with SAIF's characterization of the record and asserts that the opinions of Dr. Bong, an infectious disease specialist who performed a records review at SAIF's request, Dr. Norris, a dermatologist who examined claimant at SAIF's request, and Dr. Dordevich, an allergist-immunologist who performed a Worker-Requested Medical Examination, are unpersuasive. She maintains that her conditions are work related.

To establish the compensability of her claimed conditions, claimant must establish that her work exposure was a material contributing cause of the need for treatment/disability for the claimed conditions. *See* ORS 656.266(1). Here, for the reasons expressed in the ALJ's order, the record does not establish that the physicians relating claimant's conditions to her day and a half of work exposure had persuasive opinions. Consequently, we agree with the ALJ's conclusion that the right hand MRSA cellulitis and contact dermatitis conditions are not compensable. *See* ORS 656.005(7)(a). Thus, we affirm.

#### ORDER

The ALJ's order dated November 5, 2018 is affirmed.

Entered at Salem, Oregon on April 3, 2019