
In the Matter of the Compensation of
JOANNE J. YOUNG, Claimant
Own Motion No. 10-0152M
OWN MOTION ORDER OF DISMISSAL
Unrepresented Claimant
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Biehl and Langer.

Claimant requests review of a May 26, 2010 Notice of Closure that did not award temporary and permanent disability. Based on the following reasoning, we dismiss the request as untimely filed.¹

FINDINGS OF FACT

Claimant sustained a compensable cervical and left elbow injury on December 11, 1992. Her aggravation rights have expired.

On May 17, 2010, the SAIF Corporation voluntarily reopened claimant's Own Motion claim for a "post-aggravation rights" new/omitted medical condition ("lumbar strain"). (Ex. 19). On May 26, 2010, SAIF issued an Own Motion Notice of Closure, which closed claimant's Own Motion claim. (Ex. 21). The notice included instructions concerning where to file a request for review and the time period within which to do so. Specifically, the notice provided that, absent a showing of good cause, the request for review must be filed with the Board within 60 days from the notice's mailing date.

On August 9, 2010, we received claimant's request for review of the May 26, 2010 Own Motion Notice of Closure.

CONCLUSIONS OF LAW AND OPINION

Pursuant to OAR 438-012-0060(2), claimant had 60 days from the mailing date of the Notice of Closure in which to file a request for Board review, or 180 days from the mailing date if she could establish "good cause" for failure to file the request within 60 days. Therefore, if claimant filed a request for review more than 60 days after the claim closure, but within 180 days, we would consider whether she had a valid reason for not requesting review within 60 days.

¹ Claimant's December 11, 1992 claim was accepted as a disabling claim and was first closed on March 24, 1993. Thus, claimant's aggravation rights expired on March 24, 1998. Therefore, when claimant sought claim reopening in May 2010, the claim was within our Own Motion jurisdiction. ORS 656.278(1). On May 17, 2010, the SAIF Corporation voluntarily reopened claimant's Own Motion claim for a "post-aggravation rights" new/omitted medical condition ("lumbar strain"). On May 26, 2010, SAIF issued its Notice of Closure.

Here, the 60th day after the mailing date of the May 26, 2010 Notice of Closure was July 25, 2010, a Sunday. Thus, the 60-day deadline was the following Monday, July 26, 2010. ORS 174.120; *Bunny G. Johnson*, 54 Van Natta 198 (2002); *Eric W. Lundberg*, 53 Van Natta 1647 (2001). Claimant's request for review of this closure was not received until August 9, 2010. Therefore, it was untimely filed.

Finally, the request was received by the Board within 180 days from the May 26, 2010 Notice of Closure. Consequently, we address the question of whether the record establishes good cause why claimant's request for review of the May 2010 Notice of Closure was not made within the 60-day appeal period.

If the request for review of a closure is not timely filed, it is incumbent upon claimant to establish that there was good cause for failure to file the request within 60 days after the mailing date of the notice of closure. *Joan Beaver*, 50 Van Natta 1357 (1998). The standard for determining if good cause exists has been equated to the standard of "mistake, inadvertence, surprise or excusable neglect" recognized by ORCP 71B(1) and former ORS 18.160. *Anderson v. Publishers Paper Co.*, 78 Or App 513, 517, rev den, 301 Or 666 (1986); see also *Brown v. EBI Companies*, 289 Or 455 (1980). Lack of due diligence does not constitute good cause. *Cogswell v. SAIF*, 74 Or App 234, 237 (1985).

Here, SAIF's May 26, 2010 Own Motion Notice of Closure contained appeal rights pursuant to OAR 438-012-0055 that listed the Board's address, instructed claimant to ask for review by writing to the Board at that address if she thought the claim closure was wrong, and provided the time period within which to make such a request. Claimant offers no explanation why her appeal was not filed with the Board within the 60-day appeal period. Under such circumstances, good cause for the untimely filed request for review has not been established.

Accordingly, claimant's request for Board review is untimely filed. Therefore, her request for review is dismissed.²

IT IS SO ORDERED.

Entered at Salem, Oregon on September 23, 2010

² Finally, because claimant is unrepresented, she may wish to consult the Ombudsman for Injured Workers, whose job it is to assist injured workers. She 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