
In the Matter of the Compensation of
JEFF L. ROBERTS, Claimant
WCB Case No. 02-02450, 01-09471
ORDER ON REVIEW
Mitchell & Guinn, Claimant Attorneys
Julie Masters, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Langer, Bock, and Biehl. Member Biehl chose not to sign the order.

Claimant requests review of those portions of Administrative Law Judge (ALJ) Podnar's order that: (1) declined his motion to postpone the hearing; and (2) upheld the SAIF Corporation's denial of his current cervical condition. On review, the issues are the propriety of the ALJ's procedural ruling and compensability.

We adopt and affirm the ALJ's order with the following supplementation regarding claimant's motion to postpone the hearing.

Noting the dates of claimant's aggravation claim and SAIF's denials, as well as the posture of the claim, the ALJ denied claimant's motion to postpone the hearing so that he could obtain the diagnostic studies various physicians recommended. On review, claimant argues that the ALJ's ruling was incorrect because the physicians in the case had insufficient information to evaluate the cause of claimant's cervical condition. For the following reasons, we conclude that the ALJ's ruling was correct.

OAR 438-006-0081 allows for a postponement if there is a finding of "extraordinary circumstances" beyond the control of the party requesting the postponement. Subsection (4) of that rule provides that "extraordinary circumstances" shall not include "incomplete case preparation, unless the [ALJ] finds that completion of the record could not be accomplished with due diligence." Thus, the postponement rule requires that a postponement motion based on incomplete case preparation be denied, unless there is a showing of due diligence by the moving party. *Larry W. Ogburn*, 50 Van Natta 344, 345 (1998).

In this case, we agree with SAIF that claimant's ground for postponing the hearing was, in essence, incomplete case preparation. Thus, claimant was required to make a showing of due diligence in attempting to complete the record. In this regard, we recognize that the physicians involved in this case recommended as

early as in September 2001, further diagnostic studies in order to clarify the diagnosis and/or the cause of claimant's current cervical condition. However, the record does not disclose any attempts by claimant to obtain the recommended diagnostic studies prior to the June 24, 2002 hearing.

After reviewing the record, we find there has been no showing of "extraordinary circumstances." Accordingly, we find the ALJ properly declined to postpone the hearing.

ORDER

The ALJ's order dated July 2, 2002 is affirmed.

Entered at Salem, Oregon on January 27, 2003