

In the Compensation of  
**Chalres R. Gode, Claimant**  
Contested Case No: 06-010H  
**PROPOSED & FINAL ORDER**

May 23, 2006

CHARLES R. GODE, Petitioner  
SAIF CORPORATION, Respondent

Before Robert A. Davis, Administrative Law Judge, Workers' Compensation Board

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Hearing convened and closed in this matter on April 26, 2006, in Portland, Oregon, before the undersigned administrative law judge. Claimant was present and represented himself. The employer, Armstrong Manufacturing Company, and the insurer, SAIF Corporation, were represented by their attorney, Julene M. Quinn.

Exhibits 1 through 26 were admitted into evidence in this case.

### ISSUES

The narrow issue addressed in this proceeding is whether claimant's request for abatement and reconsideration of a December 14, 2005 Administrative Order was filed timely.

### FINDINGS OF FACT

On September 4, 1997, claimant was compensably injured when he was struck in the head by a piece of wood.

Claimant developed head and eye pain, starting behind the left eye and radiating toward the back of the head. He also had tinnitus. He experienced some neck and upper-back pain.

The insurer accepted a concussion as disabling.

The insurer later issued a modified notice of acceptance that in addition to concussion recognized as compensable TMJ, concussion syndrome with headaches, tinnitis, and left hearing loss.

Claimant had a protracted recovery period. He suffered from a post-concussion syndrome with ongoing headaches. His doing more than a half hour of work at the computer would result in headache. Dr. Erb eventually referred him for biofeedback training.

In 2005, claimant and the insurer entered into a Claim Disposition Agreement.

Claimant developed an interest in the possible therapeutic effect of cannabis and found that certain strains of it were useful for him. He had been evaluated in a medical marijuana clinic and had obtained a medical marijuana care from the Oregon Department of Human Services. He began growing cannabis and using it as a medication. Claimant felt it was

necessary for him to grow it himself so that he would have the correct strains. He established his own grow room. Claimant was incurring monthly expenses in connection with the growing operation.

Claimant submitted bills to the insurer for costs associated with the marijuana production. The insurer declined to pay the bills.

Claimant sought administrative review of SAIF's refusal to pay the expenses associated with cannabis growing.

On December 14, 2005, the Medical Review Unit of the Workers' Compensation Division issued an Administrative Order in which the Director ordered that SAIF Corporation was not liable to reimburse claimant for out-of-pocket expenses associated with production of medical marijuana. The Director found that Dr. Erb was the attending physician and that she did not prescribe or authorize medical marijuana. The order provided appeal rights indicating that claimant could request a hearing before the Director and that no review would be granted unless the request was mailed to the Director within 30 calendar days from the date of the Administrative Order.

On January 17, 2006, claimant filed (by facsimile) a Motion for Abatement and Request for Reconsideration of the above-mentioned Administrative Order. In the alternative, claimant requested a hearing.

On January 18, 2006, the Medical Review Unit of the Workers' Compensation Division issued an Administrative Order of Dismissal on the basis that claimant's request for reconsideration was not timely.

### **CONCLUSIONS OF LAW AND OPINION**

The Administrative Order claimant sought to challenge was issued on December 14, 2005 (Exhibit 22). The relevant portions of OAR 436-010-0008 provide that a party may file a request for hearing within 30 days of the mailing date of such an order.

Claimant faxed his request for reconsideration on January 17, 2006 (Exhibit 25), which date was more than 30 days following the issuance date of the order for which claimant sought reconsideration. (The 30<sup>th</sup> day after issuance of the order was December 13, 2005, a Friday.)

Pursuant to OAR 436-001-0019(6)(a) and (b), I may only consider whether the denied request for hearing was filed timely, or if good cause existed that prevented the party from timely requesting a hearing on the merits. The rule provides that "good cause" includes mistake, inadvertence, surprise, or excusable neglect.

Claimant argued at hearing that he delayed in filing his request because he was waiting for a letter from Dr. Erb (Exhibit 9-3). The filing of a request for reconsideration or the filing of a request for hearing does not depend upon obtaining any particular piece of evidence. To preserve one's rights, the party to a proceeding must meet the filing deadlines. Claimant knew

that he had a deadline within which to file his appeal of the Director's order (Exhibit 24). There is nothing in the appeal rights on the Director's order (Exhibit 22-6) that suggests it is necessary to obtain any particular evidence prior to requesting a hearing. Claimant did not meet the deadline for requesting a hearing, and his explanation does not justify failure to request a hearing timely, nor does it justify failure to request reconsideration timely.

### **ORDER**

IT IS HEREBY ORDERED:

The Director's January 18, 2006 Administrative Order of Dismissal, DMMS 06-082, is affirmed.