

In the ORS 656.254 Medical Services Dispute of

**JEFFREY P. SKOGSTAD, Claimant**

Contested Case No: H05-113

**ORDER ABATING DEFAULT ORDER AND GRANTING RESET**

January 26, 2006

JEFFREY P. SKOGSTAD, Petitioner

LIBERTY NORTHWEST INSURANCE CORP., Respondent

Before John Shilts, Administrator, Workers' Compensation Division

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This matter comes before the director on petitioner claimant's exceptions to Office of Administrative Hearings Administrative Law Judge Lawrence S. Smith's December 1, 2005 Default Order.

On July 30, 2005, claimant, *pro se*, requested a hearing appealing the July 15, 2005 Administrative Order that found insurer not liable to reimburse claimant for a spa and related supplies, tools, and chemicals. On August 4, 2005, the matter was referred to the Office of Administrative Hearings for hearing. The hearing was initially scheduled for August 25, 2005, and was ultimately rescheduled for November 16, 2005. On October 3, 2005, the Office of Administrative Hearings mailed a Notice of Rescheduled Telephone Hearing to the parties notifying them of the new hearing date. The notice instructed the parties to call the number provided at the date and time of hearing. It further provided, "If you are the party requesting the hearing and you fail to call within fifteen (15) minutes after the time set on the date of your hearing, the hearing may be dismissed. \* \* \* IF THE PARTY REQUESTING THE HEARING FAILS TO APPEAR AT THE SCHEDULED HEARING WITHOUT GOOD CAUSE, AN ORDER OF DISMISSAL MAY BE ISSUED." (Emphasis in original.) Claimant did not appear at the November 16, 2005 hearing and on December 1, 2005, the ALJ issued a Default Order dismissing claimant's appeal.

OAR 436-001-0201(1)<sup>1</sup> provides,

"If the petitioner fails to appear at the hearing, the administrative law judge may issue an order of dismissal or an order to show cause. An order to show cause shall allow the petitioner ten days to present argument establishing good cause reason for the failure to appear."

The ALJ found that claimant provided no evidence regarding his failure to appear. On December 12, 2005, claimant submitted a letter explaining his failure to appear. Claimant states he missed the hearing because of a severe allergic reaction and itching. He says he called the next morning and was told to wait for a letter and then follow the directions to appeal. Claimant's December 12, 2005 letter was treated as timely exceptions to the Default Order, and although he does not state it explicitly I treat claimant's letter as a request for abatement of the Default Order and reset of the hearing. Insurer has not responded to claimant's letter.

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<sup>1</sup> This rule was repealed effective 1/2/06. However, the version effective April 1, 2004 applies here.

The ALJ was within his discretion to dismiss claimant's request for hearing. However, in light of claimant's post-hearing contact and subsequent explanation, and in light of insurer's lack of objection, claimant is granted the opportunity to have his hearing rescheduled.

The December 1, 2005 Default Order is abated. This matter will be referred to the Workers' Compensation Board, Hearings Division for hearing.<sup>2</sup>

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<sup>2</sup> In his December 12, 2005 letter claimant includes argument regarding the underlying issue. Claimant will have the opportunity to raise his arguments at hearing.