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In the ORS 656.245 Medical Services of  
**Alton R. Granville, Claimant**  
Contested Case No: 11-087H  
**PROPOSED & FINAL ORDER OF DISMISSAL**  
January 26, 2012  
ALTON R. GRANVILLE, Petitioner  
BROADSPIRE SERVICES, INC., Respondent  
Before Robert W. Pardington, Administrative Law Judge

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On June 17, 2011, the Workers' Compensation Division (WCD) received a request for hearing from claimant, *pro se*, regarding the June 15, 2011 Administrative Order of Dismissal of his request for review of payments of massage therapy billings. (Exs. 109, 110). On June 21, 2011, the WCD referred the matter to the Hearings Division for a hearing under ORS 656.704(2)(a). A first date of hearing, on September 16, 2011, before the undersigned ALJ, was postponed due to observance of a state-wide mandatory "furlough" day.

A second hearing date was set for January 11, 2012, in Portland, Oregon, before the undersigned ALJ. Claimant was sent notice of this hearing to his only known address. There is no evidence that the Notice of Hearing was returned as undeliverable by the United States Postal Service. Claimant also replied to a December 16, 2011 letter from the Hearings Division, indicating that he would attend the hearing and represent himself.

The hearing convened at 1:30 P.M. on January 11, 2012. Claimant did not appear, nor did anyone on his behalf. After waiting 30 minutes past the official start time, the employer and processor, through attorney Kelly Niemeyer, made a motion for dismissal, which was granted.

The next day, January 12, 2012, the Hearings Division received a letter from claimant, dated January 11, 2012, which stated:

"Do an unforeseen mix up and accident I was unable to make my hearing that was set for today at 130 pm. I would like to reschedule the hearing as soon as possible. I apologize for this delay."

### CONCLUSIONS OF LAW

Unjustified failure of a party or the party's representative to attend a scheduled hearing is a waiver of appearance. If the party that waives appearance is the party that requested the hearing (here, the claimant), the ALJ shall dismiss the request for hearing as having been abandoned unless extraordinary circumstances justify postponement or continuance of the hearing. OAR 438-006-0071(2).

Here, claimant did not appear at the scheduled January 11, 2012 hearing. The question is whether he has demonstrated "extraordinary circumstances" to justify postponement of his hearing. *Id.*

I agree with the employer that claimant's January 11, 2012 letter does not demonstrate "extraordinary circumstances" justifying a postponement and reset of his hearing. Claimant has not explained what "mix up and accident" interfered with his ability to attend the hearing. Accordingly, I adhere to my oral ruling dismissing claimant's request for hearing.

**ORDER**

**IT IS HEREBY ORDERED** that the Request for Hearing is dismissed with prejudice.