

In the ORS 656.245 Medical Services Dispute of  
**PATRICIA RUIZ, Claimant**  
Contested Case No: H05-054  
**PROPOSED AND FINAL SHOW CAUSE ORDER**  
October 3, 2005

PATRICIA RUIZ, Petitioner  
SAIF CORPORATION., Respondent  
Before Catherine P. Coburn, Administrative Law Judge, Administrative Hearings

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### **HISTORY OF THE CASE**

Claimant appeals the Administrative Order issued on January 31, 2005 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (department or director). On June 7, 2005, the department referred the matter to the Office of Administrative Hearings (OAH). On September 23, 2005, Administrative Law Judge Catherine P. Coburn conducted a hearing in Beaverton, Oregon. Petitioner Patricia M. Ruiz (claimant) appeared without benefit of counsel. Licensed massage therapist Jane Markulis appeared without benefit of counsel as a limited party pursuant to OAR 137-003-0535. Attorney David L. Runner represented respondent SAIF Corporation (insurer). The record closed on the date of hearing.

### **ISSUE**

Whether the untimely request for hearing is excused by good cause.

### **EVIDENTIARY RULINGS**

WCD Exhibits 1 through 19 were admitted into the record without objection.

### **FINDINGS OF FACT**

(1) On August 5, 2004, claimant suffered a compensable injury while working as a registered nurse. (Ex. 3.) Insurer accepted right deltoid tendonitis. (Ex. 9.)

(2) Markulis provided massage therapy to claimant from September 1 through October 1, 2004. (Exs. 11 and 13.) On December 6, 2004, insurer disallowed payment because the massage therapy was not performed under direct control and supervision of the attending physician. (Ex. 15.)

(3) On January 31, 2005, MRU issued Administrative Order MS 05-083 determining that insurer was not liable for the disputed massage therapy. The Administrative Order contained instructions for appeal, including a complete address for WCD. (Ex. 16.)

(4) Claimant wrote a letter dated February 22, 2005 to MRU contesting the decision. The letter and envelope reflected an incomplete address. (Ex. 18; testimony of claimant.) At

that time, claimant experienced stress because she about to leave on an international trip. (Testimony of claimant.) On February 23, 2005, claimant mailed the letter from Markulis' office. (Testimony of claimant.) WCD did not receive claimant's letter until Markulis sent a copy of it enclosed in a letter, also contesting the decision, which WCD received on March 21, 2005. (Ex. 19.)

### CONCLUSION OF LAW

The untimely request for hearing is not excused by good cause.

### OPINION

Jurisdiction lies with the director and I review for substantial evidence or error of law. ORS 656.245(6); OAR 436-001-0225(1). The burden of proving a fact or position falls upon the proponent. ORS 183.450(2). As petitioner, claimant bears the burden of proving by a preponderance of evidence that the administrative order is incorrect. *Cook v. Employment Div.*, 47 Or 437 (1982) (In the absence of legislation adopting a different standard, the standard of proof in an administrative hearing is preponderance of evidence). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989).

The question presented is whether the claim is barred by untimely appeal of the administrative order. Claimant concedes that the request for hearing was untimely but argues that stress related to international travel excuses the untimely filing. Medical provider Markulis argues that she relied on claimant to request a hearing timely. In contrast, insurer contends that the request for hearing should be dismissed. Having reviewed the record, I agree with insurer's position.

OAR 436-010-0008(13)(b) provides:

(13) Contested cases before the director: Any party that disagrees with an action or order pursuant to this rule, may request a contested case hearing before the director as follows:

(b) The appeal must be made within 30 days of the mailing date of the order or notice of action being appealed.

Additionally, OAR 436-001-0155(6) provides:

(6) The director will deny requests for hearing if the request is submitted or received after the filing deadline. The party may request a show-cause hearing within 30 days after the date of the denial notice. The administrative law judge may only consider whether:

(a) The request for contested case hearing was filed timely; or

(b) If good cause existed that prevented the party from timely requesting a hearing on the merits.

Finally, OAR 436-001-0004(8) provides:

“Good cause” includes, but is not limited to, mistake, inadvertence, surprise or excusable neglect.

Here, claimant concedes that her request for hearing was untimely because the address was incomplete. I conclude that stress related to international travel does not constitute good cause that would excuse the untimely appeal. *See Hempel v. SAIF*, 100 Or App 68 (1990). Similarly, MRU received Markulis’ letter challenging the administrative order and enclosing claimant’s letter, more than 30 days after issuance of the administrative order. I conclude that Markulis’ reliance on claimant’s action does not constitute good cause. *See Rhodes v. SAIF*, 132 Or App 626 (2000). Therefore, I dismiss the request for hearing.

### **ORDER**

IT IS HEREBY ORDERED that:

The request for hearing is dismissed.