
In the ORS 656.340 Vocational Assistance Dispute of

TROY A. THOMPSON, Claimant

Contested Case No: 09-130H

FINAL ORDER

February 4, 2010

TROY A. THOMPSON, Petitioner

SAIF, Respondent

Before Kate Donnelly, Administrative Law Judge

A hearing was convened in Eugene, Oregon on February 4, 2010 before Administrative Law Judge (ALJ) Kate Donnelly. Claimant, who is unrepresented, failed to appear at hearing. The employer, Home Comfort Heating & Air Conditioning, Inc. and its insurer, SAIF Corporation (SAIF), were represented by Debra Ehrman. Counsel for SAIF moved to dismiss claimant's August 10, 2009 Request for Hearing when the hearing convened. That motion was granted.

FINDINGS OF FACT

Claimant, acting through his former attorney, George Wall, requested a hearing appealing a June 10, 2009 Director's Review and Order that ended claimant's eligibility for vocational assistance. His listed address at the time of filing the request for hearing was 565 W N St., Springfield, Eugene, OR 97477.

Claimant subsequently changed his address to 199 Silver Lane Apt. 19, Eugene, OR 97404. On August 20, 2009, a Notice of Hearing regarding a November 3, 2009 hearing in Eugene, OR, was mailed to claimant at 199 Silver Lane Apt. 19, Eugene, OR 97404.

On October 26, 2009, claimant's former attorney withdrew from representation of claimant and advised the assigned ALJ that claimant wanted the scheduled hearing to go forward.

Claimant appeared at the hearing scheduled for November 3, 2009 and requested a postponement in order to obtain legal representation. SAIF's counsel did not object. Consequently, the hearing was postponed.

On November 24, 2009, a Notice of Hearing regarding a February 4, 2010 hearing in Eugene, Oregon, before ALJ Donnelly was mailed to claimant at 565 W. North St., Springfield, OR 97477. This was an inaccurate address. Therefore, a corrected Notice of Hearing was mailed to claimant at 565 W. N St., Springfield, OR 97477.

On January 11, 2010, a letter was sent to claimant enclosing a copy of the "Notice of Rights and Procedures in Workers' Compensation Hearings." Claimant was advised to notify the Hearings Division as to his intentions regarding the case. The US Postal Service delivered the letter to claimant at his address of 565 W. N St., Springfield, OR 97477.

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A hearing convened on February 4, 2010, before ALJ Donnelly in Eugene, Oregon. Claimant did not appear, nor communicate with the Hearings Division in any manner regarding his absence. SAIF's counsel moved to dismiss the hearing on the grounds that claimant had abandoned the claim.

FINDINGS OF ULTIMATE FACT

Claimant's failure to appear as scheduled is indicative of intent to abandon prosecution of the claim initiated by the filing of the hearing request.

Extraordinary circumstances that would warrant either a postponement or continuance of the hearing have not been demonstrated.

CONCLUSIONS OF LAW AND REASONING

Claimant was notified regarding the scheduled hearing but did not appear. An unjustified failure of a party to attend a hearing is a waiver of appearance. If the party that waives appearance is the party that requested the hearing, the ALJ shall dismiss the hearing as having been abandoned unless extraordinary circumstances justify postponement or continuance of the hearing. OAR 438-006-0071(2).

Here, claimant failed to attend the hearing. Moreover, extraordinary circumstances do not exist which would justify postponement or continuance. Under such circumstances, I find that claimant has abandoned his hearing request. Therefore, I conclude that dismissal is appropriate. Accordingly, claimant's request for hearing is dismissed with prejudice.

ORDER

IT IS HEREBY ORDERED that the claimant's request for hearing in this matter is dismissed with prejudice.