

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

JUAN ALDANA MARTINEZ)	
Claimant)	
)	
V.)	
)	CS-00-0312-250
PACKERS SANITATION)	
SERVICES, INC.)	AP-00-0453-773
Respondent)	AP-00-0453-774
)	
AND)	
)	
ACE AMERICAN INSURANCE CO.)	
Insurance Carrier)	

ORDER

STATEMENT OF THE CASE

Claimant requested review of the October 13, 2020, Order of Dismissal and the October 22, 2020, Order Denying Claimant's Motion to Set-Aside the Order of Dismissal - Based on Kansas Supreme Court Administrative Order - Or in Alternative for Reconsideration and Rehearing on Respondent's Application for Dismissal Pursuant to K.S.A. 44-523(f) (Motion for Reconsideration) entered by Administrative Law Judge (ALJ) Pamela J. Fuller. Scott J. Mann appeared for Claimant. Darin M. Conklin appeared for Respondent and its insurance carrier (Respondent).

The ALJ granted Respondent's Motion to Dismiss pursuant to K.S.A. 44-523(f) because the claim failed to go to regular hearing, settlement hearing, or agreed award within three years after the application for hearing was filed. The ALJ found Respondent entitled to pursue reimbursement of voluntarily paid benefits from the Kansas Workers Compensation Fund pursuant to K.S.A. 44-534a. Further, the ALJ denied Claimant's Motion for Reconsideration based on lack of jurisdiction.

Claimant filed two applications for review to the Board: Appeal No. AP-00-0453-773 in relation to the ALJ's Order of Dismissal, and Appeal No. AP-00-0453-774 in relation to the ALJ's Order denying Claimant's Motion for Reconsideration. Claimant did not file a brief in either matter.

Respondent maintains the ALJ's Orders should be affirmed. Respondent argues Claimant failed to provide evidence of a good cause for delay. Further, Respondent argues Claimant's request for reconsideration is based on issues which should be denied for failure to raise those issues at the motion hearing. Respondent contends Claimant's

arguments should be denied, and he should not be permitted to add additional evidence to the record or seek a reversal of the ALJ's decision to dismiss.

The record on appeal is the same as the record considered by the ALJ and consists of the transcript of the October 13, 2020, Motion Hearing and the exhibits, and the transcript of the October 21, 2020, Motion Hearing, together with the pleadings contained in the administrative file.

ISSUES

1. Did the ALJ properly dismiss this claim, pursuant to K.S.A 44-523(f), because Claimant failed to establish just cause for an extension?
2. Did the ALJ properly deny Claimant's Motion for Reconsideration?
3. Did the ALJ have jurisdiction, pursuant to the Supreme Court's Order Continuing Administrative Orders Suspending Statutes of Limitation, Statutory Time Standards, Deadlines, and Time Limitations Under State Finance Council's Extension of the State of Disaster Emergency related to COVID-19 through November 15, 2020 (2020-PR-107)?

FINDINGS OF FACT

Claimant filed an Application for Hearing with the Division of Workers Compensation (Division) on September 12, 2016, alleging a specific incident in 2014 and a series of injuries by repetitive trauma through August 28, 2016. Claimant filed an amended Application for Hearing on October 20, 2016, alleging a series of injuries by repetitive trauma beginning March 5, 2016, and continuing until August 28, 2016.

On July 26, 2017, Claimant filed a Motion to Extend K.S.A. 44-523(f)(1) Limitation, stating he was actively pursuing medical treatment and prosecuting his case. On August 11, 2017, Claimant was referred for a Court-ordered independent medical evaluation (IME) with Dr. Pratt. On October 13, 2017, Dr. Pratt determined claimant reached maximum medical improvement (MMI) for his injuries. A prehearing settlement conference was conducted on March 23, 2018. The conference did not resolve the claim.

Claimant filed a second motion to extend with the Division on April 9, 2018. A prehearing settlement conference was scheduled for August 6, 2018. This resulted in a second Dr. Pratt IME conducted on October 16, 2018. Dr. Pratt issued a final rating for Claimant on November 16, 2018.

No further action was taken by either party until Respondent filed its Application to Dismiss with the Division on July 21, 2020. A hearing for Respondent's Application to Dismiss was scheduled for October 13, 2020. Notice of the hearing was issued to the parties on September 1, 2020. A hearing on Respondent's motion was held October 13, 2020, with the parties appearing through counsel. After affording both parties the

opportunity to present evidence in support of their arguments, the ALJ granted Respondent's Application to Dismiss the claim.

On October 16, 2020, Claimant filed his Motion for Reconsideration, arguing Supreme Court Administrative Order 2020-PR-2017 deprived the ALJ of jurisdiction to consider dismissal pursuant to K.S.A. 44-523(f), or alternatively, an "Order granting reconsideration and/or a rehearing on the Respondent's Application for Dismissal pursuant to K.S.A. 44-523(f)."¹

Following a motion hearing on October 21, 2020, the ALJ determined she did not have jurisdiction to reconsider or set aside an order of dismissal, nor did she have authority to rehear a motion for dismissal. The ALJ further found:

Based on a review of the applicable law and the content of the briefs submitted by the parties, it is determined that an ALJ does not have jurisdiction to reconsider or set-aside an order of dismissal, nor does it have the authority to rehear the application for dismissal. The proper procedure by which to challenge the order of dismissal is through the submission of an appeal to the Appeals Board.

Based on a review of the applicable law and the content of the briefs submitted by the parties, it is further determined that Kansas Supreme Court Administrative Order 2020-PR-107 does not govern administrative proceedings pending before the Kansas Department of Labor, and is instead directed to the operations of state district courts, appellate courts and municipal courts. The [Division] has addressed health and safety issues relative to COVID by providing for virtual/telephone hearings on matters pending before the Division.²

Claimant timely appealed.

PRINCIPLES OF LAW AND ANALYSIS

1. The ALJ properly dismissed this claim for lack of prosecution pursuant to K.S.A 44-523(f).

Pursuant to K.S.A. 44-523(f), a claimant must proceed to regular hearing, a settlement, or an agreed award within three years from the date the application for hearing is filed. This statute establishes a time limit on completing a claim based on the date when the claim was filed. Claimant's Application for Hearing was filed on September 12, 2016. Claimant timely filed two Motions to Extend – July 26, 2017, and April 9, 2018. Notwithstanding the Motions to Extend, Claimant was obligated to proceed to regular hearing, settlement hearing or an agreed award by September 12, 2019. Claimant was found to be at MMI by court-ordered evaluator Dr. Pratt initially on October 13, 2017, and

¹ Claimant's Motion (Oct.16, 2020) at 1.

² ALJ Order (Oct. 22, 2020) at 2.

again on November 16, 2018. Claimant has taken no action in pursuit of finalizing his claim since that date.

Respondent filed its Application to Dismiss on July 21, 2020. A hearing for Respondent's Application to Dismiss was scheduled for October 13, 2020. Notice of the hearing was issued to the parties on September 1, 2020. At the hearing, the only evidence presented by Claimant just cause existed to allow the ALJ to grant him an extension was difficulty of communication between Claimant and his counsel. No evidence was provided to support this argument. Claimant's counsel requested the Application for Dismissal be denied and a prehearing settlement conference be scheduled.

The ALJ found:

Claimant has failed to establish good cause for extending the three (3) year period set forth in K.S.A. 44-523(f) for prosecution of this matter. Claimant has not pursued this action with due diligence. Claimant effectively concluded medical treatment no later than November 16, 2018. There have been no stated reasons for the delay in prosecution and no efforts made to prosecute this matter. Respondent has been required to continue to monitor and defend the claim, and paid unnecessary costs. In sum, Claimant has effectively abandoned his claim by his failure to proceed with reasonable diligence.³

The Board agrees with the ALJ's findings. Claimant failed to establish just cause exists to grant an extension.

2. The ALJ properly denied Claimant's Motion for Reconsideration.

On October 16, 2020, Claimant's counsel filed a motion with the court requesting the ALJ set aside the Order of Dismissal filed on that same date or, in the alternative, issue an order "granting reconsideration and/or rehearing"⁴ on Respondent's Application for Dismissal. A hearing was held on October 21, 2020, regarding Claimant's motion. The ALJ denied Claimant's requested relief. In so doing, she found:

[A]n ALJ does not have jurisdiction to reconsider or set-aside an order of dismissal, nor does it have the authority to rehear the application for dismissal. The proper procedure by which to challenge the order of dismissal is through the submission of an appeal to the Appeals Board.⁵

The Board agrees with the ALJ's analysis and conclusions. Claimant had the opportunity to present evidence to establish just cause existed to necessitate granting an extension at the hearing on October 13, 2020. No credible evidence of just cause in

³ ALJ Order (Oct. 16, 2020) at 3.

⁴ Claimant's Motion (Oct. 16, 2020) at 1.

⁵ ALJ Order (Oct. 22, 2020) at 2.

support of Claimant's request was presented, and the request for an extension was properly denied.

The Kansas Workers Compensation Act does not provide authority for rehearing a motion or reconsideration of an order. There is no statute or director's rule granting a mechanism for such motions.⁶

3. The ALJ did have jurisdiction pursuant to the Supreme Court's Order Continuing Administrative Orders Suspending Statutes of Limitation, Statutory Time Standards, Deadlines, and Time Limitations Under State Finance Council's Extension of the State of Disaster Emergency related to COVID-19 through November 15, 2020 (2020-PR-107).

The ALJ found:

Kansas Supreme Court Administrative Order 2020-PR-107 does not govern administrative proceedings pending before the Kansas Department of Labor, and is instead directed to the operations of the state district courts, appellate courts and municipal courts.⁷

The Board agrees with the ALJ's finding. Claimant's reliance on the Order issued by Supreme Court Justice Marla Luckert is without merit. The Order issued was simply a continuance of the previous Order issued by the Supreme Court on March 18, 2020. Claimant failed to raise this as an issue at the October 13, 2020, hearing. Claimant has not provided any authority to support his contention this Order applies to administrative hearings pending before the Kansas Division of Workers Compensation.

CONCLUSION

After review of the record, the Board concludes the Order to Dismiss and the Order denying Claimant's Motion to Reconsider should be affirmed.

ORDER

WHEREFORE, it is the finding, decision and order of the Board the Orders of Administrative Law Judge Pamela J. Fuller dated October 16, 2020, and October 22, 2020, are affirmed.

⁶ See *Sullivan v. Onforce, Inc.*, No. 1,068,237, 2015 WL 996902 (Kan. WCAB Feb. 25, 2015).

⁷ ALJ Order (Oct. 22, 2020) at 2.

IT IS SO ORDERED.

Dated this _____ day of January, 2021.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Scott J. Mann, Attorney for Claimant
Darin M. Conklin, Attorney for Respondent and its Insurance Carrier
Hon. Pamela J. Fuller, Administrative Law Judge