
In the Matter of the Compensation of
SHEILA L. FREEMAN, Claimant
Own Motion No. 13-0116M
SECOND OWN MOTION ORDER OF DISMISSAL
Dodge and Associates, Claimant Attorneys
Heidi Havercroft, SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Weddell and Langer.

On February 21, 2014, we dismissed claimant's request for Own Motion relief. We took such action in response to claimant's withdrawal of her request. Claimant moves for reconsideration of our dismissal order, contending that she withdraws her prior dismissal request, and requesting appointment of a medical arbiter. Having received the SAIF Corporation's response and claimant's reply, we proceed with our reconsideration.¹

On January 27, 2014, claimant's attorney withdrew claimant's request for review, stating that "[a]fter careful consideration and careful review of this claim," claimant wished to withdraw her request. Pursuant to that request, we dismissed the matter (as corrected) on February 21, 2014. *Sheila L. Freeman*, 66 Van Natta 324 (2014). On February 26, 2014, claimant's attorney requested reconsideration of our dismissal order, stating "claimant withdraws her request for dismissal and asks that her closure at issue receive an arbiters' exam for the recently accepted conditions * * *." In addition, claimant's attorney requested reconsideration "for processing of a new condition and time loss * * *."

After considering these circumstances, we adhere to our dismissal of claimant's request for review. Claimant's attorney unequivocally withdrew the request "after careful consideration and careful review." On reconsideration, claimant states that such a phrase is just an "expression" and that the determinative "legal issue" is that she has asked that our dismissal order be withdrawn within the "appeal period."² In response, SAIF opposes "reinstatement" of the request.

¹ Because claimant's motion for reconsideration was filed within 30 days of our February 21 order, we are authorized to reconsider our previous decision. *See Gladys Biggs*, 54 Van Natta 1094 (2002).

² Claimant further asserts that this "expression" came from her "former counsel." Nonetheless, we note that this "former counsel" remains listed as an attorney on the letterhead of the law firm's motion for reconsideration of our dismissal order, as well as the "current counsel's" reply.

After considering the parties' respective positions, we decline to exercise our discretion to reconsider our dismissal order for the purposes of reinstating claimant's request for review of the Notice of Closure. We base this conclusion on the following reasoning.

In *Sharon E. Kelly (VanGorder)*, 39 Van Natta 467 (1987), we instated a claimant's request for review of an ALJ's (then-referee's) order. There, the claimant (although represented) had initially requested dismissal without benefit of counsel, which resulted in our dismissal order. Shortly thereafter (while we retained jurisdiction to reconsider our decision), the claimant (through her attorney of record), sought reconsideration of our dismissal order, submitting an affidavit stating that she was confused by the appellate process and under mental/emotional stress (which was verified by a report from a mental therapist). Under such circumstances, we found it appropriate to reconsider our dismissal order and to reinstate the claimant's appeal.

Here, in contrast to *Kelly (VanGorder)*, claimant has essentially offered no explanation for the previous withdrawal of her request for review and the reason why her appeal should be reinstated. Her reasoning is that she has sought reconsideration of the dismissal order within the appeal period and, as such, we are authorized to withdraw our previous order.

We do not disagree with the general proposition advanced by claimant; *i.e.*, that we have the authority to exercise our discretion to withdraw our dismissal order for reconsideration and to reinstate her request for review. Nonetheless, the determinative question is whether claimant has provided a sufficient explanation for her previous actions that justifies the exercise of the aforementioned discretionary action.

Considering the jurisdictional importance of a request for Board review, as well as the potential finality of a dismissal order (executed in response to a party's withdrawal of an otherwise pending request), we assume that the withdrawal of a party's appeal is only taken after a thorough analysis of the situation and a full appreciation concerning the serious ramifications of such an action. In light of the gravity of such circumstances, we further expect to receive an explanation regarding the basis for a party's initial withdrawal of a request for review and the basis for seeking reinstatement of that appeal.

In this case, claimant has offered no persuasive explanation for the unequivocal decision to withdraw her request for review (which was taken by her attorney on her behalf) and her subsequent decision to seek reinstatement

of her appeal other than her timely reconsideration motion “is determinative.”³ Yet, although the filing of a motion for reconsideration within the designated “reconsideration/appeal” period provides the jurisdictional foundation for us to consider the motion, an adequate justification for granting the motion and reinstating the appeal must also be established. For the reasons discussed above, we do not consider the circumstances concerning this reconsideration motion sufficient for us to exercise our authority to reinstate claimant’s request for Board review.

Accordingly, we withdraw our February 21, 2014 order. On reconsideration, as supplemented herein, we republish our February 21, 2014 order. The parties’ rights of appeal shall begin to run from the date of this order.

IT IS SO ORDERED.

Entered at Salem, Oregon on April 2, 2014

³ Referring to some “post-closure” medical reports (which were dated after the issuance of our dismissal order), claimant reasons that this “new information” provides the basis for the retraction of her prior withdrawal request. Yet, these reports concern claimant’s current condition and physical limitations (as of February 26, 2014). Because claimant’s request for review pertained to her appeal of a November 8, 2013 Notice of Closure, she does not explain why such information would be relevant regarding the previously reopened/closed claim. Instead, these reports apparently concern the second basis for her reconsideration request; *i.e.*, “for processing of a new condition and time loss * * *.” Nevertheless, any such processing of a “new condition” would have no effect on the appeal of the November 2013 closure notice regarding the previously reopened/closed “post-aggravation rights” new/omitted medical conditions (“right knee fissuring of the anterior femoral condyle articular surface and right knee patellofemoral subluxation”).

Furthermore, any such new/omitted medical condition claim processing is a separate matter. In this regard, a claimant may initiate a new/omitted medical condition at any time. ORS 656.267(1). However, to do so, claimant must clearly request formal written acceptance of the new/omitted medical condition from the insurer. *Id.* If the insurer receives such a claim, and the claim is “determined to be compensable,” it must then be processed according to the Board’s rules. *See* OAR 438-012-0001(4); OAR 438-012-0030(1); *James W. Jordan*, 58 Van Natta 34, 37 (2006).