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In the Matter of the Compensation of  
**DANIEL S. BISHOP, Claimant**  
WCB Case No. 15-05576  
SECOND ORDER OF DISMISSAL  
Dodge and Associates, Claimant Attorneys  
Law Offices of Kathryn R Morton, Defense Attorneys

Reviewing Panel: Members Lanning and Johnson.

On July 15, 2016, we abated our June 17, 2016 order that dismissed, by a final order, both claimant's and the insurer's requests for review of an Administrative Law Judge's (ALJ's) order. We took this "dismissal" action because the attorneys for both parties had announced that they had withdrawn their respective requests for review. Our abatement order issued in response to our receipt of claimant's letter requesting reconsideration. Stating that he had recently undergone an MRI, claimant requested consideration of a report regarding that procedure for which he asserted the insurer should be held responsible. Having received responses from claimant's counsel and the insurer, we proceed with our reconsideration.

FINDINGS OF FACT

On November 5, 2013, claimant signed a retainer agreement employing his attorney of record to represent him in connection with his workers' compensation claim. Claimant's attorney requested a hearing on claimant's behalf, disputing a November 9, 2015 Order on Reconsideration, and listing temporary disability benefits, penalties, and attorney fees as issues.

A hearing was set for February 19, 2016, but before the scheduled hearing, the parties agreed to submit the matter on the documentary record. When claimant's counsel did not submit a written closing argument, the insurer moved for sanctions under ORS 656.390. The record closed on March 30, 2016.

On April 29, 2016, the ALJ affirmed the Order on Reconsideration, which had affirmed a Notice of Closure's award of temporary disability and determined that there was no basis for an award of permanent disability benefits. The ALJ also declined to award penalties and attorney fees. Finally, unpersuaded that the request for hearing was frivolous or filed in bad faith or for the purpose of harassment, the ALJ denied the insurer's sanction request. *See* ORS 656.390.

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Claimant's attorney requested Board review on claimant's behalf on May 6, 2016. The insurer filed a cross-request for review on May 9, 2016.

On June 3, 2016, claimant's attorney withdrew the request for review. On June 7, 2016, pursuant to an interim order, we dismissed that request, but retained jurisdiction because of the insurer's still-pending request.

Thereafter, the insurer withdrew its request for review. Accordingly, on June 17, 2016, we issued an Order of Dismissal, dismissing both requests for review by a final order.

On July 15, 2016, we received a letter from claimant requesting reconsideration of our dismissal order. Stating that he had recently undergone an MRI, claimant requested consideration of a report regarding that procedure for which he asserted the insurer should be held responsible. To further consider the matter, we abated our dismissal order and granted the parties' counsels an opportunity to respond.

Thereafter, claimant's attorney submitted additional medical documents for inclusion into the record and also sought additional time to generate and present further medical evidence. In response, the insurer contends that claimant is apparently seeking payment for a medical service, which is not part of the current proceeding. Consequently, the insurer reasons that our dismissal order should be reinstated.<sup>1</sup> Alternatively, if we reinstate claimant's appeal, the insurer asks that its cross-request also be reinstated.

### CONCLUSIONS OF LAW AND OPINION

The sole issue currently before us is whether claimant's request for review should have been dismissed. Based on the following reasoning, we find that our prior dismissal order was appropriate.

Where a claimant signs a retainer agreement employing an attorney and giving that attorney authority to act on the claimant's behalf, a dismissal order issued in response to that attorney's withdrawal of the request is appropriate. *See Karen L. Johnson*, 52 Van Natta 1430 (2000); *April F. Zamora*, 52 Van Natta 865 (2000); *Gilberto Garcia-Ortega*, 48 Van Natta 2201 (1996).

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<sup>1</sup> The insurer states that claimant or the medical provider "can submit the appropriate billing information to [it] and it will be processed as a medical service in the usual course of business."

Here, claimant does not challenge his attorney's authority to withdraw his request for review. Nor does he assert that he was not represented by the attorney at the time in question. Similarly, claimant's attorney does not dispute that he represented claimant at the time of withdrawal of the request for review, or give any reason as to why our dismissal order based on his withdrawal of the request was inappropriate.

Consequently, this record establishes that, through his attorney, claimant withdrew his request for review. Moreover, neither claimant nor his attorney have provided an explanation for us to disregard claimant's attorney's previous unambiguous withdrawal of claimant's request for review. Under these circumstances, we reinstate our dismissal order.<sup>2</sup> See *Sheila L. Freeman*, 66 Van Natta 603, 604 (2014) (where the claimant offered no explanation for the previous withdrawal of her request for review and the reason why her appeal should be reinstated, her request to withdraw prior dismissal order denied); *Zamora*, 52 Van Natta at 865 (although the claimant may have been dissatisfied with her attorney's action withdrawing request for review, the Board declined to alter dismissal order); cf. *Sharon E. Kelly (Van Gorder)*, 39 Van Natta 467 (1987) (request for review reinstated after a dismissal order issued based on the claimant's dismissal request, where the claimant sought reconsideration of our decision, submitting an affidavit stating that she was confused by the appellate process and was under mental/emotional stress (as verified by a report from a mental therapist)).

Accordingly, on reconsideration, as supplemented herein, we adhere to and republish our June 17, 2016 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 August 31, 2016

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<sup>2</sup> We further note that claimant requested a hearing on a reconsideration order. Therefore, we are statutorily limited to the record developed during the reconsideration proceeding. ORS 656.268(7)(h); ORS 656.283(7) (evidence on issue regarding notice of closure not submitted at the reconsideration is not admissible). Neither the ALJ nor the Board may consider evidence outside the reconsideration record. See *Kathryn D. McMahon*, 62 Van Natta 2866 (2010); *Sandi Jones*, 59 Van Natta 44 (2007).

Moreover, claimant's hearing request concerned the issues of temporary and permanent disability benefits arising from the Order on Reconsideration, as well penalties and attorney fees. In contrast, the basis for claimant's motion for reconsideration appears to concern a medical services dispute. Thus, even if claimant's request for review was reinstated, our review authority would not extend to the current medical service matter. Rather, that matter is a claim processing question (entirely separate from this current proceeding) between claimant and the insurer.