In the Matter of the Compensation of
ROBERT F. STAUDMIER, Claimant
WCB Case No. 01-10012
ORDER ON REVIEW
Merkel & Associates, Claimant Attorneys
Scheminske et al, Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

Claimant requests review of Administrative Law Judge (ALJ) Mills' order that dismissed his hearing request. In its respondent's brief, the SAIF Corporation moves to strike claimant's appellant's brief as untimely. On review, the issues are the motion to strike and the propriety of the ALJ's dismissal order.

We adopt and affirm the ALJ's order with the following supplementation.[1]

We first summarize the procedural history of this case. Claimant suffered an injury on November 17, 1999, while he was employed with W.G. Moe & Sons, insured by SAIF. Claimant then sustained another injury on July 23, 2001, while he was employed by Emerick Construction, also insured by SAIF. Claimant requested a hearing regarding the issue of responsibility, which was set for March 19, 2002.

Just prior to the start of the March 19, 2002 hearing, claimant's former attorney announced that a settlement had been reached with Emerick/SAIF (WCB No. 01-07024), and that he was withdrawing his request for hearing as it pertained to W.G. Moe/SAIF (WCB No. 01-10012). The attorney for W.G. Moe/SAIF requested an order of dismissal with prejudice. (Tr. 2, 3). On March 29, 2002, the ALJ issued an Order of Dismissal, dismissing claimant's hearing request in WCB No. 01-10012 with prejudice.

On April 19, 2002, claimant's former attorney wrote to the ALJ that claimant no longer wished to proceed with the settlement reached in WCB No. 01-07024 and that he "wishes to preserve his rights as to both case numbers." Claimant's former attorney also requested abatement of the ALJ's March 29, 2002

[1] We need not resolve SAIF's motion to strike claimant's appellant's brief, because our decision would be the same regardless of whether we considered the brief.

dismissal order. In order to allow further time to consider the matter, the ALJ abated the March 29, 2002 dismissal order on April 23, 2002.

On April 26, 2002, claimant's former attorney resigned as claimant's attorney, but requested on behalf of claimant that the matters be returned to the docket and set for hearing, because claimant did not wish to proceed with the Emerick/SAIF settlement. On May 8, 2002, the ALJ wrote to the parties summarizing the events and providing claimant (then unrepresented) an additional 14 days "to provide any further basis for why the Order of Dismissal concerning W G Moe should be set aside."

On May 22, 2002, claimant's current attorney requested that claimant be allowed to proceed with his claim against W.G. Moe/SAIF, because the earlier dismissal order was predicated on claimant's settlement with Emerick/SAIF, and because claimant would not have dismissed W.G. Moe/SAIF "but for the proposed settlement with Emerick."

After receiving W.G. Moe/SAIF's response, the ALJ issued a second dismissal order on June 11, 2002. The ALJ reasoned that claimant had voluntarily withdrawn the hearing request at the time of the hearing, and that W.G. Moe/SAIF should not be prejudiced by the fact that claimant's settlement with the other party "fell through." The ALJ also noted that claimant's request for hearing in WCB No. 01-07024 (regarding Emerick/SAIF) would be reset in normal course.

On review, claimant renews his contention that the ALJ's dismissal order was improper. We disagree.

Claimant has the burden of proving that the dismissal order was inappropriate. *Donald J. Murray*, 50 Van Natta 1132, 1133 (1998). Initially, we note that claimant signed a retainer agreement hiring his former attorney to represent him on these claims on September 7, 2001. (Hearings Division file). The retainer agreement provided that claimant "authorize[d] [his] attorneys to sign my name and in all other respects to act for me in relation to my claim." (*Id.*) There is no contention by claimant that his former attorney did not have the authority to act on his behalf at the time he unequivocally withdrew the request for hearing against W.G. Moe/SAIF. *See Karen L. Johnson*, 52 Van Natta 1430 (2000) (ALJ's dismissal order affirmed where there was no assertion by the claimant that her attorney lacked the authority to withdraw her hearing request).

In addition, claimant did not object when, in response to claimant's withdrawal of his hearing request, W.G. Moe/SAIF requested an order of dismissal *with prejudice*. (Tr. 2, 3). The ALJ then indicated on the record the intention to issue an order of dismissal with prejudice. (Tr. 2). Once again, claimant raised no objection.[2]

In such circumstances, we cannot find that the ALJ's dismissal order was improper. Consequently, we affirm the ALJ's order.

ORDER

The ALJ's order dated June 11, 2002 is affirmed.

Entered at Salem, Oregon on January 28, 2003

[2] There is no indication that claimant made any acquiescence to a dismissal order expressly conditional on settlement approval with Emerick/SAIF. Furthermore, claimant did not ask the ALJ to continue or postpone the hearing in order to confirm that the settlement with Emerick/SAIF would be approved.