
In the Matter of the Compensation of
MICHAEL E. BRIM, Claimant
WCB Case No. 02-00453
ORDER ON REVIEW
Claimant Unrepresented
Hoffman Hart & Wagner, Defense Attorneys

Reviewing Panel: Members Biehl and Langer.

Claimant, *pro se*, requests review of Administrative Law Judge (ALJ) Herman's order that dismissed his request for hearing. On review, the issue is propriety of the dismissal. We affirm.

FINDINGS OF FACT

On January 1, 2001, claimant signed a retainer agreement employing his then-attorney of record to represent him in connection with his workers' compensation claim. A provision of that retainer agreement stated that the attorney "is authorized to sign [claimant's] name and in all other respects to act for [claimant]."

On January 16, 2002, claimant, through his then-attorney, requested a hearing regarding a December 14, 2001 denial and raised issues regarding the denial and penalties and attorney fees. A hearing was scheduled for April 4, 2002, then rescheduled for August 7, 2002.

On August 6, 2002, claimant, through his then-attorney, withdrew his hearing request. On August 14, 2002, finding that claimant had withdrawn his hearing request, the ALJ dismissed claimant's hearing request.

Thereafter, claimant requested Board review of the ALJ's dismissal order. Claimant also asked to be "advise[d] as to how to proceed from this point to obtain another hearing date pertaining to my claim."

CONCLUSIONS OF LAW AND OPINION

The ALJ dismissed claimant's hearing request. Thus, the sole issue before us is whether claimant's hearing request should have been dismissed. Based on the following reasoning, we find the ALJ's dismissal order appropriate.

Where a claimant signs a retainer agreement employing an attorney and giving that attorney authority to act for claimant, a dismissal order issued in

response to that attorney's withdrawal of the hearing request is appropriate. *Donald J. Murray*, 50 Van Natta 1132 (1998); *Robert S. Ceballos*, 49 Van Natta 617 (1997).

Claimant has the burden of proving that the dismissal order is not appropriate. *Donald J. Murray, supra*, 50 Van Natta at 1133, citing *Harris v. SAIF*, 292 Or 683, 690 (1982) (burden of proof is upon the proponent of a fact or position, the party who would be unsuccessful if no evidence were introduced on either side). However, claimant makes no argument as to why the dismissal order was not appropriate.

Moreover, the retainer agreement between claimant and his then-attorney authorized that attorney to act for claimant. Claimant does not assert that his then-attorney did not withdraw his hearing request. Neither does claimant assert that he was not represented by his then-attorney at the time in question. *Cf. Silverio Frias, Sr.*, 49 Van Natta 1514 (1997) (Board vacated ALJ's dismissal order and remanded to the ALJ to determine if the attorney was authorized to withdraw the request for hearing).

Under these circumstances, we find no reason to alter the dismissal order. *James L. Butler*, 52 Van Natta 1510 (2000); *Eva F. Gutierrez*, 51 Van Natta 2028 (1999).¹

ORDER

The ALJ's order dated August 14, 2002 is affirmed.

Entered at Salem, Oregon on March 14, 2003

¹ Claimant's letter to the Board requesting review of the ALJ's order also requests advice as to how to obtain another hearing. Because claimant is unrepresented, he may not be clear as to what his rights are under this claim. The Workers' Compensation Board is an agency of the State of Oregon and, as such, is an adjudicative body. In other words, the Board resolves disputes presented to it by parties; it does not provide legal advice to any party.

Inasmuch as claimant is not represented, he may wish to consult the Workers' Compensation Ombudsman, whose job it is to assist injured workers in such matters. He may contact the Workers' Compensation Ombudsman, free of charge, at 1-800-927-1271, or write to:

WORKERS' COMPENSATION OMBUDSMAN
DEPT OF CONSUMER & BUSINESS SERVICES
350 WINTER ST NE
SALEM OR 97301-3878