
In the Matter of the Compensation of
GRACE DIAZ, Claimant
WCB Case No. 02-07177
ORDER ON REVIEW
Claimant Unrepresented
Alice M. Bartelt, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Phillips Polich and Langer.

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

FINDINGS OF FACT

On March 14, 2002, claimant signed a retainer agreement employing her then-attorney of record to represent her in connection with her workers' compensation claim. A provision of that retainer agreement stated that the attorney was authorized to sign claimant's name "and in all other respects to act for [claimant]."

On September 23, 2002, claimant, through her then-attorney, requested a hearing regarding a September 16, 2002 denial and raised issues regarding "a partial denial after claim acceptance" and attorney fees. A hearing was scheduled.

On December 18, 2002, claimant, through her then-attorney, withdrew her hearing request and consented to a dismissal order. On December 20, 2002, finding that claimant had withdrawn her hearing request, the ALJ dismissed claimant's hearing request. Thereafter, claimant requested Board review of the ALJ's dismissal order.

CONCLUSIONS OF LAW AND OPINION

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). Here, claimant makes no argument as to why the dismissal order was not appropriate.

Moreover, the retainer agreement between claimant and her then-attorney authorized that attorney to act for claimant. Claimant does not assert that her then-attorney did not withdraw her hearing request. Neither does claimant assert that she was not represented by her 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 25, 2003

¹ Claimant's letter to the Board requesting review of the ALJ's order also asks who she should call "to get more information."

Because claimant is not represented, she may wish to consult the Workers' Compensation Ombudsman, whose job it is to assist injured workers in such matters. She 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