
In the Matter of the Compensation of
DOROTHY S. GABBARD, Claimant
WCB Case No. 02-02287
ORDER ON REVIEW
Claimant Attorneys
Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

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

FINDINGS OF FACT

On May 11, 2001, claimant signed a retainer agreement employing her then-attorney of record to represent her in connection with a 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 March 21, 2002, claimant, through her then-attorney, requested a hearing regarding a March 18, 2002 denial and raised issues regarding the denial and penalties and attorney fees. A hearing was scheduled for June 19, 2002, then subsequently rescheduled for December 27, 2002.

On November 16, 2002, claimant, through her then-attorney, withdrew her hearing request. On December 11, 2002, finding that claimant had withdrawn her hearing request, the ALJ dismissed claimant's hearing request.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 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. *Murray*, 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.

The retainer agreement between claimant and her then-attorney authorized that attorney to act for claimant. Claimant does not 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). Moreover, claimant does not dispute that (at the time) she authorized her then-attorney to withdraw her hearing request.

Consequently, 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).

ORDER

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

Entered at Salem, Oregon on May 9, 2003