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In the Matter of the Compensation of  
**GERALD C. MATHIAS, Claimant**  
Own Motion Nos. 05-0069M; 05-01280  
FINAL OWN MOTION ORDER AND OWN MOTION ORDER  
Unrepresented Claimant  
John B Motley, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Langer and Biehl.

The SAIF Corporation submitted a “Carrier’s Own Motion Recommendation” against the reopening of claimant’s 1981 claim for a “post-aggravation rights” new/omitted medical condition (“L5 compression fracture”). See ORS 656.278(1)(b) (2001). SAIF opposed the reopening of the claim, contending, among other issues, that claimant’s “post-aggravation rights” new medical condition was not causally related to his 1981 claim.

On February 18, 2005, SAIF issued a denial of the aforementioned “post-aggravation rights” new/omitted medical condition on which claimant requested a hearing. (WCB Case No. 05-01280). We postponed action regarding the Own Motion “claim reopening” issues pending resolution of the hearing. (WCB Case No. 05-0069M).

On May 19, 2005, Administrative Law Judge (ALJ) Reichers issued an order that dismissed claimant’s hearing request from the aforementioned denial. Claimant, *pro se*,<sup>1</sup> requests review of the ALJ’s order.

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

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<sup>1</sup> Although claimant was represented at the time of the ALJ’s order, on June 16, 2005, claimant’s former attorney advised the Board that he no longer represents claimant. Inasmuch as claimant is unrepresented, 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  
PO BOX 14480  
SALEM, OR 97309-0405

Claimant signed a retainer agreement authorizing his attorney to represent him concerning his Workers' Compensation claim. On February 24, 2005, claimant's then-attorney filed a hearing request, challenging the February 18, 2005 denial and raising the issues of compensability, attorney fees, and temporary disability. On May 11, 2005, claimant's then-attorney withdrew the hearing request on claimant's behalf. Pursuant to this action, on May 19, 2005, the ALJ issued an order dismissing claimant's hearing request. By letter received June 2, 2005, claimant requested review of this order.

The preliminary 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.

Claimant has the burden of proving that the dismissal order was not appropriate. *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); *Donald J. Murray*, 50 Van Natta 1132 (1998). 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 hearing request is appropriate. *Gary D. Davis*, 54 Van Natta 1607 (2002); *Wilson O. Santamaria*, 52 Van Natta 657 (2000); *Robert S. Ceballos*, 49 Van Natta 617 (1997); *Gilberto Garcia-Ortega*, 48 Van Natta 2201 (1996).

Here, although claimant disagrees with his then-attorney's actions in withdrawing the hearing request, he makes no argument as to why the dismissal order was not appropriate. In addition, claimant does not contend that his then-attorney did not withdraw his hearing request or did not have the authority to do so.

Under these circumstances, we find no reason to alter the dismissal order. *William A. Martin*, 46 Van Natta 1704 (1994); *Mike D. Sullivan*, 45 Van Natta 900 (1993); *Eul G. Moody*, 45 Van Natta 835 (1993).

Consequently, the denied new/omitted medical condition ("L5 compression fracture") remains in denied status; *i.e.*, it is not compensable. In light of such circumstances, we are not authorized to reopen the claim for that "post-aggravation rights" new/omitted medical condition. *See Ruth A. Beck*, 56 Van Natta 3943 (2004).

Accordingly, the request for claim reopening for the “post-aggravation rights” new/omitted medical condition under ORS 656.278(1)(b) (2001) is denied.

IT IS SO ORDERED.

Entered at Salem, Oregon on July 5, 2005