
In the Matter of the Compensation of
MISTY A. GOLDEN, Claimant
WCB Case No. 15-03219
ORDER ON REVIEW
Unrepresented Claimant
Reinisch Wilson Weier, Defense Attorneys

Reviewing Panel: Members Curey and Weddell.

Claimant, *pro se*,¹ requests review of Administrative Law Judge (ALJ) Crummé's order that dismissed her hearing request from the self-insured employer's denial of her occupational disease claim for bilateral upper extremity conditions. On review, the issue is the propriety of the ALJ's dismissal order.

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

In June 2015, 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 agreement stated that her attorney was authorized to "take such actions on [claimant's] behalf as, in their opinion, are appropriate in representing [claimant's] interests." (Hearing file). In addition, the agreement stated that, "[claimant's] attorney may either withdraw from representing [claimant] or dismiss the matter or hearing request pending before any court, Board or administrative agency." (*Id.*)

In July 2015, claimant, through her then-attorney, requested a hearing regarding the employer's July 10, 2015 denial of her occupational disease claim for bilateral upper extremity conditions. (Ex. 31).

On September 17, 2015, claimant, through her then-attorney, withdrew her hearing request. On September 23, 2015, finding that claimant had withdrawn her hearing request, the ALJ issued an Order of Dismissal.

¹ Inasmuch as claimant is unrepresented, she may wish to consult the Workers' Compensation Ombudsman, who assists injured workers. She may contact the Workers' Compensation Ombudsman, free of charge, at 1-800-927-1271, or write to:

OMBUDSMAN FOR INJURED WORKERS
DEPT OF CONSUMER & BUSINESS SERVICES
PO BOX 14480
SALEM, OR 97309-0405

Thereafter, claimant timely requested Board review of the ALJ's dismissal order.

On review, claimant represents that, on September 17, 2015, her then-attorney discussed the possible withdrawal of her request for hearing. She states that she hesitantly agreed to withdraw her hearing request, but approximately 30 minutes after that discussion, she had new pain. She recalls that she called her then-attorney's office and explained that she no longer wished to withdraw the request for hearing.

The issue 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 the claimant, a dismissal order issued in response to that attorney's withdrawal of the hearing request is appropriate. *Lorena Aguirre*, 62 Van Natta 3068 (2010); *Stephen L. Dargis*, 53 Van Natta 971 (2001); *Donald J. Murray*, 50 Van Natta 1132 (1998). 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 on the proponent of a fact or position, the party who would be unsuccessful if no evidence were introduced on either side).

In previous cases, we have held that the dispositive issue is not a claimant's state of mind at the time a hearing request is withdrawn, but whether the claimant's attorney represented the claimant and whether the attorney withdrew the hearing request. *E.g.*, *Randy S. Bender*, 60 Van Natta 2414 (2008) (retainer agreement provision that "allowed full professional judgment and discretion in the appeal and development of [the claimant's] case * * * including [the attorney's] representation and signing for [the claimant], any professional courtesies and associations and decisions regarding appeals" authorized attorney to withdraw hearing request); *Dargis*, 53 Van Natta at 971; *Rachelle M. Rock*, 50 Van Natta 1168 (1998). In evaluating an attorney's authority to withdraw a hearing request on his/her client's behalf, we have broadly interpreted retainer agreement provisions. *See, e.g.*, *Aguirre*, 62 Van Natta at 3068 (retainer agreement provision that allowed the claimant's counsel to "represent [her] interests" for all of her claims authorized the attorney to withdraw hearing request based on the unqualified expansiveness of the provision and lack of express limitation on attorney's actions).

Here, the retainer agreement between claimant and her then-attorney authorized that attorney to "take such actions on [claimant's] behalf as, in their opinion, are appropriate in representing [claimant's] interests." (Hearing file).

In addition, the agreement stated that, “[claimant’s] attorney may either withdraw from representing [claimant] or dismiss the matter or hearing request pending before any court, Board or administrative agency.” (*Id.*) Considering the unqualified expansiveness of those provisions, as well as claimant’s acknowledged express consent to withdraw the request, we conclude that the withdrawal of a hearing request was encompassed within claimant’s counsel’s authority to act on her behalf.

In addition, the record persuasively establishes that claimant’s then-attorney unequivocally withdrew her hearing request. There is no indication that claimant was not represented by her then-attorney when this action was taken. *Cf. Angelina Ceja*, 54 Van Natta 1271 (2002) (ALJ’s dismissal order vacated and case remanded for determination of whether the attorney was authorized to withdraw hearing request).

Finally, the record does not establish (and claimant does not assert) that, following her attorney’s submission of the “withdrawal” of the hearing request, any actions were taken to notify the ALJ of a “retraction” of that “withdrawal” either before, or within 30 days after, the ALJ’s dismissal order. *See Rebecca J. Cartwright*, 55 Van Natta 434, 436 (2003) (the claimant was entitled to a hearing when she retracted the withdrawal of her hearing request *before* issuance of an Order of Dismissal, rather than after the issuance of the dismissal order during the reconsideration period). Rather, claimant filed a request for Board review.

Under such circumstances, the record establishes that claimant’s then-attorney was authorized to withdraw claimant’s hearing request. Because no attempt was made to either rescind that action prior to the ALJ’s dismissal order or to seek reconsideration of the ALJ’s order, we find no reason to alter the ALJ’s decision.² *James L. Butler*, 52 Van Natta 1510 (2000); *Eva F. Gutierrez*, 51 Van Natta 2028 (1999). Accordingly, we affirm.

ORDER

The ALJ’s order dated September 23, 2015 is affirmed.

Entered at Salem, Oregon on February 16, 2016

² If claimant has a disagreement with her former attorney’s actions, that disagreement may be a matter for another forum. *Bender*, 60 Van Natta at 2415. However, such a disagreement is not an adequate ground for altering the ALJ’s dismissal order under the circumstances of this case.