
In the Matter of the Compensation of
TIMOTHY J. LISAC, Claimant
WCB Case No. 15-01647
ORDER ON REVIEW
Steffen Legal Services, Claimant Attorneys
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Weddell and Curey.

Claimant requests review of Administrative Law Judge (ALJ) Mills's order that dismissed his hearing request. 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.

On April 10, 2016, claimant requested a hearing concerning a Workers' Compensation Division's (WCD's) suspension order, raising the additional issues of penalties and attorney fees.

Thereafter, the parties entered into a Claim Disposition Agreement (CDA), which was approved by the Board. The CDA recited that the parties had "agreed to settle claimant's claim for compensation and payments of any kind due or claimed." The agreement provided that in consideration of the payment of a stated sum, claimant fully released his past, present, and future "non-medical-service-related" benefits, including temporary disability compensation, penalties, and attorney fees.¹ The agreement further provided that the SAIF Corporation's obligation to provide such benefits was also released. The CDA also waived the ORS 656.236(1)(a)(C) 30-day "waiting period." No party timely requested reconsideration of the Board's CDA approval. *See* OAR 438-009-0035 (providing for reconsideration of CDA approval orders).

Following the Board's approval of the CDA, the ALJ issued an Order of Dismissal. Thereafter, the ALJ abated the dismissal order to address claimant's motion for reconsideration of that order. In seeking reconsideration, claimant expressed concerns regarding his continued medical treatment and his capacity to agree to the CDA.

¹ The CDA expressly preserved claimant's rights to certain future attorney fees and penalties. Further, a CDA cannot dispose of "all matters" and "all rights to compensation, attorney fees and penalties potentially arising out of claims" where those matters and rights involve medical services. ORS 656.236(1)(a); *Liberty Northwest Ins. Corp., Inc. v. Watkins*, 347 Or 687, 694 (2010). We also note that a workers' eligibility for preferred worker status pursuant to ORS 656.622 may not be waived by a CDA. ORS 656.622(4)(b).

After a conference call with claimant's then-attorney-of-record and SAIF's counsel,² the ALJ issued a Modified Order of Dismissal. In dismissing the hearing request, the ALJ found that the issues raised by the request had been resolved by the CDA.

On review, claimant explains that his request for reconsideration of the dismissal order had attempted to "request[] review of the CDA because he was concerned with its validity for a number of reasons." Yet, claimant's hearing request did not pertain to an objection to the CDA, which was approved after the request was filed.³ Instead, his hearing request pertained to the suspension order, and raised penalty and attorney fee issues.

Claimant does not contest the conclusion that the approved CDA resolved all issues raised by the hearing request, and we find that the CDA rendered the hearing request moot. In doing so, we note that ORS 656.236(1)(a) provides, "Unless otherwise specified, a [CDA] resolves *all matters* and all rights to compensation, attorney fees and penalties potentially arising out of claims, except medical services, regardless of the conditions stated in the agreement." (Emphasis supplied). Here, the CDA released all rights other than those related to medical services, and did not preserve SAIF's rights under the suspension order.⁴ Therefore, the approved CDA rendered moot all issues raised by claimant's request for hearing.⁵

² Claimant expresses concerns regarding his former attorney's legal services. Nevertheless, the record establishes that claimant's former attorney was authorized, by their retainer agreement, "in all respects to act for [claimant] in relation to [his] claim." See *Lorena Aguirre*, 62 Van Natta 3068 (2010) (affirming dismissal of hearing request after the claimant's former attorney withdrew the hearing request, despite the claimant's subsequent contention that the withdrawal was contrary to her wishes, because doing so was within the former attorney authority at the time). If claimant is challenging the legal services of his former attorney, that is not a matter for this forum.

³ If a party seeks to have a settlement agreement set aside, the proper remedy is to request a hearing before the Hearings Division pursuant to ORS 656.283. See *Karen D. Lester*, 66 Van Natta 585 (2014). The finality of a CDA or DCS does not divest a party of the right to a hearing on the agreement's validity or rescission. *Id.* at 586. Thus, if claimant wishes to overturn the approved CDA, he may request a hearing and develop a record in support of his request, despite the formidable burden he would face. *Id.* at 588.

⁴ SAIF stipulates that it is obligated by the CDA to continue to pay for claimant's medical services.

⁵ Further, a dispute regarding the approved CDA was not before the ALJ, whose order was confined to claimant's "pre-CDA" hearing request.

Consequently, the ALJ's dismissal of the hearing request was appropriate. *See Edward C. Steele*, 49 Van Natta 119 (1997). Accordingly, we affirm.

ORDER

The ALJ's order dated July 22, 2015, as modified August 26, 2015, is affirmed.

Entered at Salem, Oregon on March 29, 2016