

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F312425

ODELL WATSON, EMPLOYEE	CLAIMANT
QUALITY BEARING SERVICE, EMPLOYER	RESPONDENT
ACE AMERICAN INSURANCE COMPANY, CARRIER	RESPONDENT

ORDER FILED FEBRUARY 15, 2005

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant represented by HON. LEWIS RITCHEY, Attorney at Law, Little Rock, Arkansas.

Respondent represented by HON. MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

ORDER

Presently before the Commission is the claimant's Motion to Dismiss his appeal. In addition, the Clerk of the Commission has placed the November 22, 2004, letter the claimant's attorney wrote to the claimant advising that he would not be filing a notice of appeal, with the Full Commission as a Motion to Withdraw.

With regard to claimant's Motion to Dismiss, we find that this motion should be granted. The claimant's attorney advised his client that he will not file an appeal on the claimant's behalf, thus the claimant filed his own Notice of Appeal. The claimant has spoken with our Legal Advisors and he has been advised of his rights and obligations. Respondents have no objection to dismissing the

appeal. Accordingly, after consideration of all matters properly before the Commission, we find that the claimant's Motion to Dismiss his appeal should be, and hereby is, granted.

The more difficult question is the characterization of the November, 2004, letter as a Motion to Withdraw as Counsel. It appears that this letter was filed with the Commission on December 30, 2004; however it is unclear how this letter came to be filed with the Commission as it was only addressed to the claimant and neither the Commission nor the respondent's attorney were served with a copy. The Clerk of the Commission originally placed the letter on the Full Commission Motion Docket of January 19, 2005. There is no evidence that the claimant objected to this November 22, 2004, letter as he filed his own notice of appeal with the Commission on December 8, 2004. AWCC Advisory 2003-2 clearly states in pertinent part:

A lawyer may not withdraw from any proceeding or from representation of any party to a claim without permission of the Commission. Permission to withdraw may be granted for good cause shown if counsel seeking permission presents a proper request in writing to the Commission showing (a) that reasonable steps have been taken to avoid foreseeable prejudice to the rights of

his/her client, including giving notice to his/her client, allowing time for employment of other counsel; and (b) that the attorney has delivered or stands ready to tender to the client all papers and property to which the client is entitled.

It appears from the November 22, 2004, letter addressed to the claimant from the claimant's attorney that the attorney has complied with all of the requirements of AWCC Advisory 2003-2 except for the submission of a proper request to the Commission seeking permission to withdraw. Claimant's attorney simply advised the claimant that he will not represent the claimant on appeal. There is no evidence that the claimant's attorney submitted the November 22, 2004, letter to the Commission as a Motion to Withdraw. This letter was somehow provided to the Clerk's office and the Clerk chose to treat this letter as a motion. We do not find that this letter and the manner it came to be filed with the Commission satisfies the requirements of our advisory. Therefore, we find we do not have a proper Motion to Withdraw presently before the Commission, and claimant's attorney is not granted permission to withdraw from representing the claimant at this time.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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SHELBY W. TURNER, Commissioner

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KAREN H. MCKINNEY, Commissioner