Merrill, Kenneth

BOARD

Motion to vacate order on agreement of parties

A party who chooses not to participate in proceedings may not have an agreement vacated simply because their consent was not obtained.*In re Kenneth Merrill*, BIIA Dec., 06 22417 (2008)

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS STATE OF WASHINGTON

IN RE: KENNETH D. MERRILL

CLAIM NO. Y-944601

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DOCKET NO. 06 22417

ORDER DENYING MOTION TO VACATE ORDER ON AGREEMENT OF PARTIES

The claimant, Kenneth D. Merrill, filed an appeal on December 22, 2006, from an order of the Department of Labor and Industries dated November 11, 2006. In this order, the Department affirmed closure of the claim effective October 28, 2005. On December 12, 2007, we issued an Order on Agreement of Parties that reversed the Department order and remanded with directions to provide treatment for the claimant's left leg, accept an aggravation of a pre-existing venous stasis, and pay time-loss compensation for the period November 12, 2004, through November 1, 2006.

On April 24, 2008, we received a document from the employer that we treated as a Notice of Appeal from a Department order dated April 14, 2008 (appeal assigned Dckt. No. 08 14015) and, because of statements in the Notice of Appeal, we also construed the document as a request to vacate the Order on Agreement of Parties dated December 12, 2007. This order responds only to the request to vacate our Order on Agreement of Parties.

Our record of this appeal reflects that on January 17, 2007, the Building Industry Association
of Washington (BIAW), filed a Notice of Appearance as the lay representative for the employer,
Tacoma Fixture Company. On February 13, 2007, a settlement telephone conference was held;
the BIAW was sent notice, but did not participate. On May 2, 2007, a scheduling telephone
conference was held; BIAW was given notice, but did not participate. On November 27, 2007, a
settlement telephone conference was held; BIAW was given notice, but did not participate. At this
conference, the worker and the Department entered into the agreement to reverse the closure of
the claim.

The employer asserts that it was not included in the agreement. Our record demonstrates that the employer representative was given notice of all proceedings and did not participate. The representative offered no rationale for not participating in any of the conferences held in this matter. The employer has not asserted it did not receive notice, nor has it asserted that the representative was available for the telephone conference and not called. A party's failure to participate in the proceeding should be interpreted as a waiver of any right to now object to the terms of the agreement. See *In re Dannie Dillard, Dec'd.*, BIIA Dec., 89 3691 (1990).

The employer has not established a basis on which to vacate the Order on Agreement of Parties. The request to vacate is denied.

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24	It is ORDERED .		
25	DATED: July 15, 2008.		
26		BOARD OF INDUSTRIAL INSURA	NCE APPEALS
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28		/s/ THOMAS E. EGAN	Chairperson
29		HIOMAS E. EGAN	Charperson
30		/s/	
31		FRANK E. FENNERTY, JR.	Member
32			
		/s/ CALHOUN DICKINSON	Member