

## Alaniz, Hector

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### BOARD

#### Motion to vacate order on agreement of parties

Mutual mistake for purposes of vacating an Order on Agreement of Parties can be established where it is demonstrated the resolution was not based on a meeting of the minds. ...*In re Hector Alaniz*, BIA Dec., 00 19916 (2001)

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1 context of the settlement discussions. The mistake made by counsel, regarding the calculation of  
2 benefits is not the same as a circumstance where counsel, in hindsight, is dissatisfied with choices  
3 deliberately made. *Nemaizer v. Baker*, 793 F.2d 58, 62 (2d Cir. 1986). We believe there was no  
4 deliberate decision to resolve this appeal for approximately \$10,000. Instead, we believe this is an  
5 instance where counsel was not fully aware of the implications of the settlement and had he been  
6 so, would not have entered into the agreed resolution.  
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8 Similarly, this is not an instance where the party seeks vacation of an agreed order on the  
9 basis counsel exceeded his authority. *Haller v. Wallis*, 89 Wn.2d 539 (1978). In *Wallis*, counsel  
10 settled an action, and the client, upon discovering the settlement amount, moved to vacate the  
11 agreed resolution. The Supreme Court noted that mutual mistake may support vacation of a  
12 settlement judgment. 89 Wn.2d at 544. In this matter, since we do not have a response from the  
13 Department's representative, we are unable to determine whether the mistake was mutual. Since  
14 consideration of motions to vacate is addressed to our discretion, we conclude the actual  
15 calculation of the settlement amount constituted a mistake sufficient to justify relief from the order.  
16 *Cf. Ebsary v. Pioneer Human Services*, 59 Wn.App 218 (1990).  
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18 After a careful review of the record and claimant's motion, particularly since the  
19 Department's representative elected not to explain its perspective on the agreement, we believe  
20 that claimant has established a basis on which we can vacate the Order on Agreement of Parties.  
21 Accordingly, pursuant to CR 60(b), we are vacating the Order on Agreement of parties dated  
22 December 28, 2000 and this matter will be remanded to the mediation process for further action as  
23 required.  
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25 It is so ORDERED.

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27 DATED: April 2, 2001.  
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29 BOARD OF INDUSTRIAL INSURANCE APPEALS  
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33 /s/ \_\_\_\_\_  
34 THOMAS E. EGAN Chairperson  
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43 /s/ \_\_\_\_\_  
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