

Jennings, Iva

BOARD

Motion to vacate order adopting proposed decision and order

Miscommunication between an attorney and client does not establish a lack of consent for purposes of vacation of a Board order.*In re Iva Jennings*, BIIA Dec., **01 11763 (2002)** [*Editor's Note*: The Board's decision was appealed to superior court under King County Cause N o03-2-15607-8-KNT & 04-2-04473-1-SEA.]

Scroll down for order.

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

1 **IN RE: IVA N. JENNINGS**) **DOCKET NO. 01 11763**
2)
3) **ORDER DENYING MOTION TO VACATE**
4) **ORDER ADOPTING PROPOSED DECISION**
5 **CLAIM NO. P-819317**) **AND ORDER**
6

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8 On March 1, 2001, the claimant Iva N. Jennings, filed a protest and request for
9 reconsideration with the Department of Labor and Industries. On March 9, 2001, the Department
10 forwarded the protest to the Board for treatment as a direct appeal of an order of the Department of
11 Labor and Industries dated January 5, 2001. The order affirmed an order dated October 24, 2000,
12 that assessed an overpayment in the amount of \$8,021.65, which resulted because the claim was
13 rejected. On July 25, 2002, our industrial appeals judge issued a Proposed Decision and Order
14 which affirmed the Department order dated January 5, 2001. On August 29, 2002, having received
15 no petition for review, we issued an Order Adopting Proposed Decision and Order as the final order
16 of the Board.

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18 Thereafter, on September 3, 2002, we received from Ms. Jennings, a request for an
19 extension of time in which to file a petition for review. After our executive secretary notified
20 Ms. Jennings that the request for an extension of time in which to file a petition for review was not
21 timely, Ms. Jennings filed a request to vacate the Order Adopting Proposed Decision and Order, on
22 the basis of CR 60(b)(1) and (b)(4). We provided the Department of Labor and Industries and the
23 employer the opportunity to respond. No response was received. After consideration of the
24 claimant's motion, the records and files contained herein, we determine that the motion must be
25 denied.

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27 In support of her request to vacate the Order Adopting Proposed Decision and Order,
28 Ms. Jennings, acting on her own behalf, indicated that she had been notified by her attorney that
29 there had been a death in his family and that he would not file a timely petition for review on her
30 behalf. He informed her to file a petition for review or an extension of time. She alleges this
31 conversation took place on August 26, 2002. However, it would appear that the last day in which to
32 file a petition for review or an extension of time would have been on or before August 23, 2002.

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34 Her attorney, James Walsh, who is still the attorney of record in this matter, indicated that
35 he had advised Ms. Jennings that he would not file a petition for review; that she indicated that she
36 understood this; and that this conversation took place before the 20-day deadline in which to file a
37 petition for review had elapsed.

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39 It is clear that there is some misunderstanding between Mr. Walsh and his client. We
40 believe it is unnecessary for us to determine the exact nature of these communications between
41 Mr. Walsh and his client. This is because if we accept as true the circumstances as described by
42 Ms. Jennings, she has not described an occurrence which creates a basis under which the Order
43 Adopting Proposed Decision and Order could be vacated pursuant to CR 60. Mistakes,
44 inadvertence, or misrepresentation by one's attorney does not establish a basis under the rule on
45 which the order can be vacated. See *Morgan v. Burks*, 17 Wn. App 193 (1977).
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1 The claimant did not file a timely petition for review or request for an extension of time in
2 which to file a petition for review. Circumstances have not been established that would justify the
3 untimely filing. Accordingly, the claimant's motion to vacate the Order Adopting Proposed Decision
4 and Order must be denied.
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6 It is so ORDERED.
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8 DATED: December 16, 2002.
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10 BOARD OF INDUSTRIAL INSURANCE APPEALS
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12 /s/ _____
13 THOMAS E. EGAN Chairperson
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17 /s/ _____
18 FRANK E. FENNERTY, JR. Member
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