

CASE NO. 5163 CRB-2-06-11
CLAIM NO. 200152997

DOUGLAS BLADES : COMPENSATION REVIEW BOARD
CLAIMANT-APPELLANT

v.

REDMAN & TURNQUIST : WORKERS' COMPENSATION
EMPLOYER COMMISSION

and

BEACON MUTUAL INS. CO. : AUGUST 21, 2007
INSURER
RESPONDENTS-APPELLEES

APPEARANCES: The claimant was notified of the instant proceeding, but did not appear at oral argument. Counsel of record, Lorenzo J. Cicchiello, Esq., Cicchiello & Cicchiello, 582 West Main St., Norwich, CT 06360, appeared in support of his Motion to Withdraw Appearance.

The respondent was represented by Joseph Passaretti, Esq., Montstream & May, L.L.P., Salmon Brook Corporate Park, 655 Winding Brook Drive, P.O. Box 1087, Glastonbury, CT 06033-6087.

Argument on this Motion to Withdraw Appearance by claimant's counsel was heard July 13, 2007 by a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Amado J. Vargas and Scott A. Barton.

RULING ON COUNSEL'S MOTION TO WITHDRAW APPEARANCE

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant's counsel of record, Lorenzo J. Cicchiello, Esq., has requested permission to withdraw from representation of his client. Attorney Cicchiello represented the claimant at the formal hearings, which

resulted in a November 2, 2006 finding of compensability for a December 23, 2003 back injury, authorization of medical treatment, and an award for 14.96 weeks of permanent partial disability. Several other claims, including alleged injuries to the right shoulder, elbow and wrist, were dismissed. Attorney Cicchiello then filed a timely petition for review and Reasons of Appeal on the claimant's behalf and at his request.

On March 2, 2007, Attorney Cicchiello filed a letter with this Commission captioned "Notice of Withdrawal of Appearance." In that letter, he stated that he was withdrawing as counsel due to a complete breakdown of the attorney/client relationship. Because Compensation Review Board policy precludes attorneys of record on a pending appeal from removing themselves without a hearing, we construed the letter as a Motion to Withdraw Appearance, scheduled a hearing, and notified all parties. At the CRB hearing, counsel reiterated his request to withdraw, and respondents' counsel objected to that request on the ground that the length of the appeal would be extended if the claimant were allowed to proceed pro se, incurring further cost to his client. The claimant did not attend the hearing before the CRB, but filed a letter dated July 23, 2007 stating that he also wanted to allow his attorney to withdraw from the case. There being no indication that this letter was sent to either Attorney Cicchiello or respondent's counsel, this board has forwarded copies of the letter to the other parties of record.

In recent cases addressing requests to withdraw, we have cited the Rules of Professional Conduct, which allow an attorney to withdraw from representing a client under certain circumstances. Angol v. In Your Neighborhood Construction, LLC, 5125 CRB-1-06-8 (July 17, 2007); Cordi-Allen v. Hartford, 4422 CRB-1-01-7 (January 30, 2002). Rule 1.16 states that an attorney may withdraw if the client's interests will not be

materially affected in an adverse way, with or without client consent. See Matza v. Matza, 226 Conn. 166, 177 (1993). Rule 1.16 then lists situations in which attorney withdrawal is allowed, even if there is some adverse impact on the client. *Id.* (attorney in marital dissolution case was allowed to withdraw from representation where he possessed reasonable belief that client was engaged in fraudulent course of action, and that client sought to offer false evidence; an evidentiary hearing on motion to withdraw was not required under facts of that case). Some examples are: if the client insists upon pursuing an objective the lawyer considers imprudent or repugnant, if representation has been made unreasonably difficult by the client, if the client persists in a criminal or fraudulent action involving the lawyer's services,¹ or if there is other good cause for withdrawal.

Here, Attorney Cicchiello represented to this board that he has been unable to communicate with the claimant in recent months, and described other circumstances showing that their relationship has broken down. This situation would render further representation unreasonably difficult. Where rapport between an attorney and client has disappeared, and they are at odds with each other, it is difficult for the attorney to effectively fulfill an advocate's role. Cordi-Allen, supra; Napolitano v. Bridgeport, 4388

¹ In Matza, supra, 180, our Supreme Court also cited the official comments to Rule 1.16, which note that an attorney has an obligation to protect the secrets of his client, which can create complications where a client has requested that the attorney engage in unprofessional conduct. Although a court understandably may seek an explanation for an attorney's withdrawal, a lawyer's statement that professional considerations require termination of representation should ordinarily be accepted as sufficient. The Court went on to say that its research had uncovered no cases in which a court concluded that a civil litigant has a due process right to an evidentiary hearing on a motion to withdraw representation. In fact, it has been held that a lawyer should only state that he has an "irreconcilable conflict" with his client where he seeks to withdraw based on a client's insistence on presenting perjured testimony. People v. Schultheis, 638 P.2d 8, 13 (Colo. 1981). The Court then discussed the fiduciary nature and delicate, confidential character of the attorney-client relationship, and reaffirmed the state's interest in promoting and preserving that relationship, while avoiding procedures or rules that undermine it. The Court observed that, if an evidentiary hearing were required to show that the claimant had in fact sought to perjure herself, counsel would be forced to prove that his client had insisted on his aid in committing perjury, or the client would be forced to prove that counsel had either lied or made a mistake as to the underlying factual circumstances. If the trial court were to then deny the motion to withdraw, it would be performing a "shotgun wedding" by forcing the attorney

CRB-4-01-5 (October 22, 2001). Given the relationship between claimant and counsel that was described at the hearing, we find that good cause for withdrawal exists.²

The record supports a conclusion that the procedural requirements of Practice Book § 3-10 outlined in Angol, supra, have also been met. A notation on Attorney Cicchiello's letter requesting withdrawal of appearance indicates that it was sent to the respondent's counsel and to the claimant at two different addresses. Notice of the hearing on the motion to withdraw as counsel was also sent to opposing counsel of record and to the claimant, who signed for the certified mail delivery. Moreover, the claimant has since stated that he supports the request for withdrawal. Due process having been followed, it is within the discretion of this board to grant counsel's request to withdraw his appearance. Tolman v. Banach, 82 Conn. App. 263, 265 (2004); Angol, supra.

The request by Attorney Cicchiello to withdraw as claimant's representative is hereby granted.

Commissioners Amado J. Vargas and Scott A. Barton concur.

to represent a client in a "strained and coerced relationship" devoid of the mutual trust and confidence that is critical to that relationship.

² Cases in which we have denied motions by counsel to withdraw have involved situations in which the claimant opposed attorney withdrawal, and effective substitute counsel would not have been readily available. These include a situation in which attorney and client disagreed over some of the reasons for client's appeal, and the attorney alleged a breakdown in the relationship; Donaldson v. Continuum of Care, Inc., 4581 CRB-3-02-10 (July 29, 2003); a case in which a respondent with no record of insurance stopped communicating with its attorney, who sought to withdraw after filing an appeal; Anderton v. Waste Away, LLC, 4435 CRB-4-01-9 (August 12, 2002), *rev'd on other grounds*, 91 Conn. App. 345 (2005); and a case involving a pro se claimant in which an employer's third-party administrator had hired counsel that later attempted to withdraw based on an unproven allegation that the employer had rescinded the administrator's authority to act as its agent; Surozenski v. Glass Container Corp., 3753 CRB-2-97-12 (February 23, 1999).