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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-000560-WC

STEVEN PRICE — APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-04-88349

TOYOTA MOTOR MANUFACTURING KENTUCKY; WORKERS' COMPENSATION BOARD; and HON. DOUGLAS W. GOTT, ADMINISTRATIVE LAW JUDGE — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: KRAMER, CHIEF JUDGE; CLAYTON AND THOMPSON, JUDGES.

KRAMER, CHIEF JUDGE: An Administrative Law Judge (ALJ) dismissed a workers' compensation claim Steven Price filed against his employer, Toyota Motor Manufacturing Kentucky (TMMK), on September 2, 2016, for permanent partial disability income benefits (PPD) relating to a right knee injury Price

sustained over ten years prior. Specifically, the ALJ determined Price's injury had been the subject of a prior settlement agreement he had entered with TMMK on August 21, 2006, and that the course of action Price should have followed pursuant to the applicable statutes was to file a motion to reopen his settlement, rather than file a new claim. The Workers' Compensation Board subsequently affirmed the dismissal, and this appeal followed. Finding no error, we likewise affirm.

The relevant facts, procedural history, and issues raised in this appeal are framed in the dispositive opinion and order of the ALJ as follows:

> On February 3, 2004, Plaintiff Steve Price tripped at work and injured his left foot/ankle and right knee. He underwent surgeries for both injuries. A knee surgery was performed by Dr. Vincent J. Sammarco, and two ankle surgeries were performed by Dr. G. James Sammarco; both doctors are orthopedic surgeons in Cincinnati. (A google search confirms the separate identities of the two doctor Sammarcos; the former graduated medical school in 1993, and the latter is in his late 70's.)
>
> Price was still treating for his injuries in mid-2006. Additional left foot/ankle surgery had been proposed but apparently declined. On June 22, 2006, a claims representative for the Defendant asked Dr. James Sammarco for an opinion on impairment assuming Price had no further surgery. Price testified he was asked to return to Dr. Sammarco's office solely for an evaluation for the left foot/ankle. (depo p. 16) Plaintiff filed Dr. Sammarco's July 24, 2006 office note documenting only an exam of the left foot/ankle. Dr. Sammarco answered the claims representative's questionnaire the same day, indicating 4% impairment and the need to "use ankle brace."
>
> The parties entered into a Form 110 settlement agreement that a previous ALJ approved on August 21, 2006. Price

said he thought the settlement agreement only covered the left ankle. (p. 19, 22) On the Form 110, the "left ankle/foot and right knee" are identified as the "injury" involved. Under the "medical information" section, left/ankle [sic] right knee surgeries are listed. The "diagnosis or diagnoses" section specifies "left foot nonunion with traumatic arthropathy of the talonavicular joint; painful screw medial foot left; right knee medial meniscal tear; and discoid meniscus lateral compartment." From the Defendant's perspective, the gist of the above is that the right knee was clearly specified as a work related injury whose condition was encompassed in the settlement. Price counters that the settlement was based on the 4% impairment for the left ankle/foot injury, and since no consideration was paid for settlement of the right knee injury he is not bound to the agreement.

Price has had two knee surgeries since the settlement agreement was approved, and the Defendant has paid for the treatment and resulting TTD.[1] (p. 17).

Price filed his Form 101 on September 2, 2016. Among the Defendant's arguments for dismissal of the claim is that the Form 101 is a disguise for a dispute over the benefits due under a settlement agreement that can only be resolved through a motion to reopen. KRS 342.265(4) states: "If the parties have previously filed an agreement which has been approved by the administrative law judge, and compensation has been paid or is due in accordance therewith and the parties thereafter disagree, either party may invoke the provisions of KRS 342.125,[2] which remedy shall be exclusive."

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[1] "TTD" is a reference to temporary total disability income benefits.

[2] In relevant part, KRS 342.125 provides:

> (1) Upon motion by any party or upon an administrative law judge's own motion, an administrative law judge may reopen and review any award or order on any of the following grounds:
>
> (a) Fraud;
>
> (b) Newly-discovered evidence which could not have been discovered with the exercise of due diligence;
>
> (c) Mistake; and

> The ALJ agrees. Price's remedy for asserting a dispute over the Form 110, or seeking an increase in PPD benefits for the knee (from the 0% he was allocated in settlement), is restricted to a motion to reopen. Contrary to his argument, Price received consideration for settlement of his knee injury in the Form 110. The right knee was accepted as compensable, and benefits were left open. (It is unfortunate the claims representative did not seek an opinion on knee impairment from Dr. Vincent Sammarco, but that failure does not afford Price any relief 10 years later. And on the other hand, since Dr. James Sammarco only treated the foot/ankle injury, Price was reasonably on notice that the impairment on which his PPD settlement was based was only for the foot/ankle.) If there are grounds to seek increased benefits for a change of disability in the right knee condition since approval of the Form 110, Price is restricted to the reopening procedure, contingent upon the time limitations of KRS 342.125(8), as clarified in Hall v. Hospitality Resources, Inc., 276 S.W.3d 775 (Ky. 2009) and Dana Corporation v. Roberts, 2015-SC-000476, 2016 WL 3371084. Plaintiff's Form 101 is dismissed.

Price thereafter appealed to the Workers' Compensation Board, which affirmed. Now on appeal before this Court, Price maintains that his September 2, 2016 claim for PPD for his February 3, 2004 right knee injury was not properly the subject of a motion to reopen because, in his view, the August 21, 2006 settlement

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> (d) Change of disability as shown by objective medical evidence of worsening or improvement of impairment due to a condition caused by the injury since the date of the award or order.
>
> (2) No claim which has been previously dismissed or denied on the merits shall be reopened except upon the grounds set forth in this section.
>
> (3) Except for reopening solely for determination of the compensability of medical expenses, fraud, or conforming the award as set forth in KRS 342.730(1)(c)2, or for reducing a permanent total disability award when an employee returns to work, or seeking temporary total disability benefits during the period of an award, no claim shall be reopened more than four (4) years following the date of the original award or order granting or denying benefits, and no party may file a motion to reopen within one (1) year of any previous motion to reopen by the same party.

agreement he negotiated with TMMK only encompassed and was only binding with respect to his February 3, 2004 left foot/ankle injury.

As to why, Price's first argument takes issue with the ALJ's interpretation of the settlement agreement. Price contends that because the settlement of his PPD income benefits was based upon a 4% impairment, which in turn derived from the 4% impairment for his left ankle/foot assigned by Dr. James Sammarco, the settlement agreement must be interpreted as only addressing his left ankle/foot injury, and not also his right knee injury.

We disagree. It is a rule of legal construction that the intention of the parties to a contract is to be gathered from the whole context of the agreement, and no part of the agreement should be construed as meaningless, ineffectual, or rejected as mere surplusage if it serves a reasonable purpose. *See Siler v. White Star Coal Co.*, 190 Ky. 7, 226 S.W. 102, 104 (1920). Indeed, "one clause may modify, limit, or illuminate the other." *Id*. Here, the ALJ's interpretation of the settlement agreement followed this rule.

As the ALJ observed, the subject matter of the settlement agreement was a singular event of injury. Whenever the settlement agreement described this injury, it described this injury as collectively involving Price's "left ankle/foot and right knee."[3] The settlement agreement explained the *injury* had been treated

[3] As the ALJ observed, the settlement agreement specified in the "medical information" section that the diagnoses attributable to Price's injury were "Left foot nonunion with traumatic arthropathy of the talonavicular joint; Painful screw medial foot left; Right knee medial meniscal tear; Discoid meniscus lateral compartment[.]"

through various surgeries to Price's left ankle and right knee.[4] It explained TMMK had paid a total of $24,344.09 for those surgeries in order to treat Price's *injury*. It also set forth that, as of the settlement date, TMMK had paid Price a total of $57,161.71 because Price's *injury*—not some discrete *part* of it—had rendered him temporarily and totally disabled. Considering the above, the statement in the settlement agreement that "$4200.50" would be paid as the "Total settlement amount" of "permanent disability" is unambiguous. This statement is broad, unqualified, and, read in conjunction with every other aspect of the settlement agreement, can only be construed as a reference to Price's *injury*, not a discrete part of it involving only his left ankle. Accordingly, it encompassed the condition of his left ankle/foot and right knee.

Next, Price presents what he characterizes as a contract formation argument. He contends the settlement agreement could not have had the effect of waiving his entitlement to future PPD income benefits for the condition of his right knee because it did not provide any "monetary consideration" for such a waiver or otherwise provide him with any benefit which he was already entitled to receive. We disagree.

To be sure, a workers' compensation settlement agreement is a contract, and consideration is necessary to make any contract binding. *See Huff*

[4] The settlement agreement noted the nature of Price's surgeries were as follows: "04/29/04: arthrodesis of the talonavicular joint of left foot with bone graft; 01/11/05 – Removal of screw from left navicular; 11/09/05 - Right knee medial meniscal repair."

Contracting v. Stark, 12 S.W.3d 704, 707 (Ky. App. 2000). "Consideration" is defined as:

> A benefit to the party promising, or a loss or detriment to the party to whom the promise is made. 'Benefit,' as thus employed, means that the promisor has, in return for his promise, acquired some legal right to which he would not have otherwise have been entitled. And 'detriment' means that the promisee has, in return for the promise, forborne some legal right which he otherwise would have been entitled to exercise.

Id. (Internal citations and quotations omitted.)

With this is mind, it is clear Price's complaint about not receiving "monetary consideration" for waiving future PPD for his right knee is irrelevant to the issue of whether a valid contract was formed in that respect. Money is not the only form of consideration. Mutual promises form valid consideration for agreements. *Campbell v. Campbell*, 377 S.W.2d 93, 95 (Ky. 1964).

To the extent Price is invoking the phrase "monetary consideration" to challenge the adequacy of the consideration he received for such a waiver, the adequacy of consideration likewise has no bearing upon the issue of contract formation.[5] Contracts "must be supported by a consideration, but the adequacy of the consideration cannot be inquired into if there is something of detriment to one

[5] Inadequacy of consideration is considered a badge of fraud and is relevant to an analysis of whether fraud occurred in a transaction. *Vires v. Riley*, 310 Ky. 797, 222 S.W.2d 831, 833 (1949). Price has never alleged that the settlement agreement was the product of fraud. Moreover, fraud provides a ground for determining that an otherwise valid contract is voidable; it is not a ground for determining that no valid contract was ever formed. *See, e.g., Brenard Mfg. Co. v. Stuart*, 212 Ky. 97, 278 S.W. 586, 588 (1925) ("A contract induced by fraud is not void. It is voidable at the option of the parties defrauded, and it requires affirmative action on his part to relieve him of the obligation.").

party or benefit to the other, however slight." *Posey v. Lambert-Grisham Hardware Co.*, 197 Ky. 373, 379, 247 S.W. 30, 33 (1923).

Price also argues that the settlement agreement could not have waived his right to future PPD for his right knee because it provided him with *nothing* in exchange. We disagree.

As discussed, it is important to distinguish the *adequacy* of consideration from its *existence*. When *no* consideration is present, a valid contract is not formed. The determination as to whether there was consideration for a waiver of future PPD was an issue of fact for the ALJ to determine. Our role on appeal is to determine whether the Board erred in its assessment that there was substantial evidence of consideration to support the ALJ's decision. *Huff*, 12 S.W.3d at 707. That said, there is no error. As both the ALJ and Board recognized, the settlement agreement contemplated the entirety of Price's injury, which involved both his left foot/ankle and right knee. And, as both the ALJ and Board recognized, in exchange for settling with Price regarding the total amount of PPD for the entirety of his February 3, 2004 injury, TMMK agreed to forgo its right to further contest the compensability of his injury for purposes of determining future medical benefits and TTD. This certainly qualified as something of a detriment to TMMK and a benefit to Price.

Lastly, Price argues no binding contract was formed with respect to PPD benefits for his right knee injury. He asserts that when he executed the

settlement agreement, TMMK failed to advise him of his right to have the settlement agreement reviewed by an attorney.

However, Price does not explain or cite authority supporting TMMK's alleged failure in this respect could have prevented the *formation* of a valid contract of settlement. Moreover, it could not have done so. Price's argument in this vein merely suggests that TMMK's actions left him more vulnerable to some form of mistake. But, mistake has no bearing upon the formation of a binding contract. It merely renders an otherwise binding contract *voidable* and, in the context of this case, voidable only through the procedures invoked by the timely filing of a motion to reopen. *See* KRS 342.265(4); KRS 342.125. Price failed to invoke those procedures. Accordingly, we cannot review whether the settlement agreement Price entered with TMMK was a voidable product of mistake.

In short, Price has presented nothing indicative of error. We therefore AFFIRM.

ALL CONCUR.

BRIEF FOR APPELLANT:

Pierre J. Coolen
Lexington, Kentucky

BRIEF FOR APPELLEE:

Kenneth J. Dietz
Emily E. Walters
Florence, Kentucky