

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002225-WC

RONALD BOWLING

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-99-91837

THE CHISHOLM COAL COMPANY;
HON. SHEILA C. LOWTHER,
CHIEF ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: GUIDUGLI, McANULTY, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Ronald Bowling (hereinafter referred to as "Bowling") petitions this Court to review an opinion of the Workers' Compensation Board (hereinafter referred to as the "Board") entered on September 24, 2003. In its opinion, the Board affirmed an order entered by the Hon. Sheila C. Lowther, Chief Administrative Law Judge (hereinafter referred to as

"CALJ"), in which the CALJ denied Bowling's motion to reopen his previously settled workers' compensation claim.

In his petition for review, Bowling argues the CALJ erred when she denied his motion to reopen since he had made a prima facie showing that his former employer, Chisholm Coal Company, had committed fraud regarding the settlement of Bowling's claim. Finding that Bowling failed to establish a prima facie case to justify reopening his workers' compensation claim, this Court affirms both the CALJ's decision and the Board's opinion.

On January 20, 1998, while working for Chisholm Coal Company (hereinafter referred to as "Chisholm"), Bowling tripped, fell, and injured his low back, right knee and right leg. On September 8, 1999, Bowling and Chisholm entered into a settlement agreement that resolved his workers' compensation claim. This agreement was reviewed and approved by Arbitrator J. Kevin King. In the agreement, Bowling agreed to be assigned an 11% impairment rating and agreed to a lump sum payment of \$25,000.00 as compensation for his permanent partial disability. At the time the parties entered into this agreement, applicable law required any workers' compensation claimant who was to receive a lump sum payment that represented weekly benefits greater than \$10.00 was to state in the settlement agreement that there is a reasonable assurance that the worker has an

adequate source of income during the disability. Kentucky Revised Statutes (KRS) 342.265(2). The parties used a standard agreement form which asked if the claimant had an adequate source of income. In the agreement, the appellant listed as an adequate source of income, "Health/Sick Benefits" in the amount of \$167.00 per week. The agreement also stated, "[h]as applied for disabled Social Security benefits. Also UMWA pension."

On February 24, 2003, Chisholm filed suit against Bowling in Pike Circuit Court. In its complaint, Chisholm alleged that it paid Bowling sickness and accident benefits pursuant to its sickness and accident plan. Chisholm alleged that pursuant to its plan, Bowling was required to indemnify it for any Social Security disability benefits Bowling received that exceeded what Chisholm paid to him as sickness and accident benefits. Chisholm alleged it had overpaid Bowling by approximately \$4,900.00 and it sought reimbursement for this amount.

On April 10, 2003, Bowling filed a motion to reopen his workers' compensation claim. He argued that it was his understanding that the settlement agreement resolved all claims between himself and Chisholm. Thus, when Chisholm brought suit against him, it violated the terms of the agreement. In other words, Bowling asserted Chisholm had waived its right to seek indemnification for sickness and accident benefits paid to him.

Bowling argued Chisholm committed fraud when it led him to believe he would have no further obligations to Chisholm. As proof of Chisholm's fraud, Bowling pointed to the settlement agreement in which health and sick benefits were listed as an adequate source of income for him during the time of his disability.

On May 14, 2003, the CALJ denied the motion to reopen. Bowling subsequently filed a petition for reconsideration. Bowling argued the settlement agreement demonstrated that Chisholm had committed fraud since it never intended to pay Bowling the health and sick benefits, yet it listed them in the settlement agreement. When Chisholm listed the benefits as an adequate source of income, it represented to Bowling that he would continue to receive those benefits. Thus, Bowling argued he had established a prima facie showing that probable cause existed to justify reopening his claim. On June 20, 2003, the CALJ denied Bowling's petition for reconsideration. Bowling appealed the CALJ's denial to the Worker's Compensation Board. In a short opinion, the Board affirmed the CALJ's decision of the CALJ. This review follows.

In his petition for review, Bowling argues he established a prima facie case to justify reopening his workers' compensation claim. Bowling argues that Chisholm perpetrated fraud not only against him but also against the arbitrator who

approved the settlement agreement. Bowling asserts that Chisholm led him to believe that all possible claims between them had been settled or waived when they entered into the agreement. To corroborate his allegation, Bowling again refers to the health and sick benefits that were listed as an adequate source of income in the settlement agreement.

Bowling cites numerous cases which stand for the proposition that even if the parties to a settlement agreement have committed no fraud against one another, if they have made misrepresentations in the settlement agreement such misrepresentations may constitute fraud against the ALJ. Such fraud is contrary to the public policy on which workers' compensation law is based and would justify the rescission of the settlement agreement. Given this proposition, Bowling argues that had the arbitrator known Chisholm never intended for Bowling to receive the health and sickness benefits, the arbitrator would have been prohibited by KRS 342.265(2) from approving the settlement.

According to KRS 342.125(1), upon either the ALJ's own motion or upon motion made by any party to a workers' compensation action, an ALJ may reopen and review any award upon one of four grounds: fraud; newly discovered evidence; mistake; or change of disability as shown by objective medical evidence. The party seeking to reopen must make a reasonable prima facie

preliminary showing of a substantial possibility that one or more of the conditions listed in KRS 342.125(1) exist. Stambaugh v. Cedar Creek Mining Company, Ky., 488 S.W.2d 681, 682 (1972).

In its opinion, the Board stated:

We first note a settlement agreement constitutes a contract by and between parties. The scope of the agreement must be determined primarily by the intent of the parties as expressed within the four corners of the document. Here, there exists no expression of an intent on the part of Chisholm to settle or waive any actions other than those that are directly part of the worker's compensation claim. In the "other information" section of the agreement, it is clearly specified Bowling is to receive an amount of money in consideration of a waiver of the right to reopen for future indemnity benefits as well as the settlement, including rehabilitation costs. No other matters are addressed in this section of the award. Although Bowling contends the agreement was to extinguish all claims, such an intent may not be presumed. Huff Contracting v. Sark, Ky. App., 12 S.W.3d 704 (2000).

We disagree with Bowling's argument that the listing of "health/sick" benefits as source of income on the agreement form constitutes an agreement to pay those benefits. Bowling argues Chisholm never intended to pay those benefits. However, Chisholm did pay the benefits. It was only after Bowling began to receive Social Security disability benefits that Chisholm sought to recover the S & A benefits based upon his receipt of Social Security benefits. Had the Arbitrator been aware Bowling would receive the S & A benefits but would be required to reimburse the plan if there were an overlap with Social Security benefits, the Arbitrator would certainly be allowed to

approve the agreement. Additionally, the Arbitrator would have been allowed to consider the UMWA pension in determining whether to approve the agreement.

Based on the foregoing, we agree with the CALJ that the dispute in this action cannot be the basis for reopening. The dispute relates to an offset in the S & A benefits plan for payments made for Social Security disability benefits. The dispute is outside the jurisdiction of the CALJ. Jurisdiction of the subject matter cannot be conferred by agreement, waiver, estoppel, or consent. Duncan v. O'Nan, Ky., 451 S.W.2d 626 (1970).

Finally, we note that at no time has Bowling alleged he was entitled to any additional workers' compensation benefits. It is apparent from the motion to reopen and from Bowling's arguments on appeal that what he seeks to recover is relief from reimbursing Chisholm for the overlap of Social Security with payments under the S & A benefits plan. The proper forum for Bowling's dispute is in Pike Circuit Court.

As the Board has cogently and sufficiently addressed the merits of the issues raised herein, we adopt the Board's reasoning as our own. This Court would add that contrary to Bowling's argument, the settlement agreement simply does not contain any evidence to support his allegation that Chisholm committed fraud. Bowling has failed to establish a prima facie showing of fraud to justify reopening his claim.

For the foregoing reasons, the opinion of the Worker's Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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