

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-001239-WC

LARRY KIDD

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-13-89060

CROSSROCK DRILLING, LLC;
HON. STEVEN BOLTON,
ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CHIEF JUDGE, J. LAMBERT, AND MAZE, JUDGES.

MAZE, JUDGE: Larry Kidd petitions for review of an opinion and order by the

Workers' Compensation Board (Board) which affirmed an order by the

administrative law judge (ALJ) denying his motion to set aside a prior opinion and award. Kidd asserts that he had entered into a settlement agreement with his employer, Crossrock Drilling, LLC (Crossrock), prior to entry of the award. As a result, Kidd maintains that the ALJ erred in finding that he lacked authority to enforce the settlement agreement. However, this matter turns on the procedural issue of whether that issue was properly presented to the ALJ. In the absence of a verified motion to enforce the purported settlement and filing of the correspondence documenting that settlement, we agree with the Board that the issue was not properly presented. Hence, we affirm.

The relevant facts of this matter are not in dispute. On October 24, 2013, Kidd filed a Form 101 alleging that he suffered work-related injuries to his back, neck, left hip, and left knee from tripping while exiting a bulldozer and falling onto the track. The parties proceeded to introduce evidence. The issues preserved for decision were whether Kidd retained the physical capacity to return to the type of work performed at the time of the injury; benefits per KRS¹ 342.730; work-relatedness/causation; unpaid or contested medical expenses; injury as defined by the Act; duration of temporary total disability (TTD); and the extent and duration and multipliers. The ALJ conducted a hearing on these issues on December 18, 2014.

Following that hearing, Kidd's attorney engaged in settlement discussions with the adjustor for Crossrock's insurer. Neither the ALJ nor

¹ Kentucky Revised Statutes.

Crossrock's counsel were advised of these negotiations. During a series of emails dated between January 28 and February 24, 2015, Kidd's attorney and the adjustor discussed a potential settlement of Kidd's claim. In the final email, dated February 24, the adjustor indicated that Crossrock would agree to a settlement involving a lump-sum payment of \$55,000 with a waiver of vocational rehabilitation benefits. The adjustor also asked Kidd's attorney to prepare the appropriate settlement documents.

But on February 20, the ALJ issued an opinion and award concluding that Kidd was not entitled to TTD benefits or future medical benefits. Kidd's attorney received the opinion on February 25. On March 3, Kidd filed a petition for reconsideration, asserting that the parties reached a settlement prior to receipt of the opinion. Kidd attached copies of the emails as an exhibit to the petition. In its response, Crossrock argued that any negotiations between Kidd's counsel and the adjustor were improper because SCR² 3.130 (4.2) prohibits a lawyer from communicating with a client who he knows to be represented by counsel. In the alternative, Crossrock argued the alleged settlement failed to resolve all material terms and was therefore unenforceable.

On April 3, the ALJ issued an order denying the petition for reconsideration. The ALJ concluded that Kidd failed to properly raise a motion to adopt the settlement by filing a Form 110 or by presenting verified motion to adopt

² Rules of the Supreme Court.

the settlement agreement. On appeal, the Board affirmed. This petition for review followed.

The only issue before this Court is whether there was a proper motion before the ALJ to adopt the alleged settlement agreement. “An agreement to settle a workers’ compensation claim constitutes a contract between the parties.”

Whittaker v. Pollard, 25 S.W.3d 466, 469 (Ky. 2000). “Once approved, an agreement to settle a claim becomes an award.” *Id. citing Stearns Coal & Lumber Co. v. Whalen*, 266 Ky. 227, 98 S.W.2d 499 (1936). *See also* KRS 342.265(1). A settlement agreement may be proven by correspondence between the parties provided that there are no assertions that the terms of the agreement are incomplete. *Coalfield Telephone Co. v. Thompson*, 113, S.W.3d 178, 180 (Ky. 2003).

In determining whether the parties have reached an agreement, the ALJ must look to the substance of the agreement rather than any particular form. *Id.* at 181. Thus, the absence of a Form 110 is not controlling. Nevertheless, there must be sufficient documentary evidence filed in the record, which when taken together, comprises the memorandum of agreement. *Id.* The ALJ and the Board each noted that Kidd never filed a verified motion to adopt the proposed settlement. Consequently, the emails establishing the purported agreement were never filed of record as required by KRS 342.265(1). As a result, the ALJ and the Board concluded that the issue was never properly presented to the ALJ.

We agree. On a petition for reconsideration, the ALJ is limited in the review to the correction of errors patently appearing upon the face of the award, order, or decision. KRS 342.281. Thus, Kidd's petition for reconsideration was not the proper means to seek enforcement of the alleged settlement. Although Kidd was not required to file a Form 110 to enforce the alleged settlement, he was required to file a verified motion with the correspondence filed of record. *Hudson v. Cave Hill Cemetery*, 331 S.W.3d 267, 270 (Ky. 2011). In the absence of a proper motion, the existence of an enforceable settlement agreement was not before the ALJ. Therefore, the ALJ and the Board properly declined to address the issue.

Accordingly, we affirm the July 17, 2015 order of the Workers' Compensation Board.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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