STATE OF MINNESOTA

IN SUPREME COURT

A19-0584

Workers' Compensation Court of Appeals | Lillehaug, J.

Galen T. Block,

Relator,

vs.

Filed: November 27, 2019
Office of Appellate Courts

Exterior Remodelers, Inc.
and RTW Group,

Respondents.

____

Danielle T. Bird, Charles A. Bird, Bird, Jacobsen, & Stevens, P.C., Rochester, Minnesota, for relator.

Patrick Ostergren, Law Office of Brian Meeker, Bloomington, Minnesota, for respondents.

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S Y L L A B U S

Minnesota Statutes § 176.179 (1988) does not apply to an award vacated by the Workers' Compensation Court of Appeals unless there was a mistake in fact or law.

Affirmed.

O P I N I O N

LILLEHAUG, Justice.

Galen T. Block appeals from a Workers' Compensation Court of Appeals (WCCA) decision holding that Minn. Stat. § 176.179 (1988) does not apply to his vacated workers' compensation award because there was no mutual mistake in fact or law. We affirm the WCCA decision.

FACTS

The facts are undisputed. Block injured his low back in 1988 while working as a roofer for respondent Exterior Remodelers. After this admitted injury, Block had two back surgeries, one in 1988 and a second in 1991. In 1992, Block and Exterior Remodelers entered into a full, final, and complete settlement agreement (Settlement) for $40,000, excluding future medical expenses. The WCCA approved the Settlement by an Award, filed and served on May 11, 1992. Block received the $40,000.

Block did not need to treat his back injury for many years. In 2009, Block experienced new symptoms related to the 1988 injury. He had two more back surgeries, in 2009 and 2010. In 2016, Block filed a Petition to Vacate the Award and argued that there was: (1) a mutual mistake of fact when the Settlement was entered into; and (2) a substantial change in his medical condition that could not have been anticipated at the time of the Award. The WCCA decided that there was no mutual mistake of fact, but vacated the Award based on the substantial change in Block's medical condition. *See Block v. Exterior Remodeling, Inc.*, No. WC16-5916, 2016 WL 5012605 (Minn. WCCA Aug. 26, 2016). Neither party appealed the WCCA decision.

After the Award was vacated, Block filed a claim petition for additional benefits. The parties stipulated to the facts regarding Block's injury and resulting disability, leaving only the question of whether Exterior Remodelers was entitled to a credit for the $40,000 already paid under the vacated Award. Block asserted that Minn. Stat. § 176.179 precluded the credit Exterior Remodelers claimed. The dispute was submitted to the compensation judge on stipulated facts.

The compensation judge ruled that section 176.179 did not apply, and that Exterior Remodelers was entitled to a full credit against Block's current claim for benefits. The WCCA affirmed. *See Block v. Exterior Remodelers, Inc.*, No. WC18-6214, 2019 WL 1469291 (Minn. WCCA Mar. 19, 2019). Block appeals from the WCCA decision.

ANALYSIS

In this appeal, we are asked to decide whether Minn. Stat. § 176.179 applies to Block's vacated Award. We review an interpretation of the Workers' Compensation Act de novo. *Dykhoff v. Xcel Energy*, 840 N.W.2d 821, 825–26 (Minn. 2013). We look to the statutes in effect on the date of Block's injury in 1988 because "[i]t is . . . a basic tenet of workers' compensation law that the substantive rights of employer and employee are fixed, not by their agreement, but rather by the law in effect on the date of the controlling event." *Joyce v. Lewis Bolt & Nut Co.*, 412 N.W.2d 304, 307 (Minn. 1987).

When parties have reached an agreement to resolve a workers' compensation claim, the Workers' Compensation Act allows them to enter into a settlement subject to approval by a compensation judge. *See* Minn. Stat. § 176.521, subds. 1–2 (1988). The Workers' Compensation Act permits adjustment of awards to ensure compensation proportionate to

the degree and duration of disability. *See Franke v. Fabcon, Inc.*, 509 N.W.2d 373, 376 (Minn. 1993); *Jones v. Schiek's Cafe*, 152 N.W.2d 356, 358–59 (Minn. 1967). An award may be set aside later if the WCCA determines that there is cause to vacate it. Minn. Stat. § 176.461 (1988).

In this case, the WCCA vacated the Award on only one of the two grounds urged by Block. The WCCA denied vacation on the ground of mutual mistake of fact, but granted it on the ground of substantial change in medical condition.

Block argues that there was, indeed, a mistake of fact in connection with the Settlement. He contends that, when the parties settled Block's claim, they believed that Block's back injury was cured and, thus, payment of an award that is later vacated must be a mistake. It follows, posits Block, that section 176.179 bars the employer from taking any credit for amounts already paid.

The version of section 176.179 in effect at the time of Block's injury in 1988 provides:

> no lump sum or weekly payment, or settlement, which is voluntarily paid to an injured employee . . . shall be refunded to the paying employer or insurer in the event that it is subsequently determined that the payment was made under a mistake in fact or law by the employer or insurer.

Minn. Stat. § 176.179 (1988). When there has been a mistake in fact or law, "the mistaken compensation may be taken as a full credit against future lump sum benefit entitlement and as a partial credit against future weekly benefits." *Id.*

We interpreted section 176.179, in *Cassem v. Crenlo Inc.*, 470 N.W.2d 102 (Minn. 1991), and *Christianson v. Axel H. Ohman Const. Co.*, 346 N.W.2d 654 (Minn. 1984). In *Cassem* and *Christianson*, each employee was mistakenly overpaid temporary disability benefits and, therefore, there was a mistake in fact that made the overpayment "mistaken compensation." *See Cassem*, 470 N.W.2d at 108; *Christianson*, 346 N.W.2d at 655. Block argues that this precedent applies to make his now-vacated Award a mistake, and thus the $40,000 paid is mistaken compensation.

We disagree with Block. Both *Cassem* and *Christianson* are distinguishable from this case because, here, compensation was not paid mistakenly. Nothing in the record shows that, when the parties negotiated the Settlement in 1992, a mutual mistake of fact occurred. To the contrary: the record shows that the parties negotiated the Settlement at arms-length and based on all of the information available at the time. The resulting Settlement was approved by the compensation judge and the resulting Award was properly paid. There was no mutual mistake in the Award. Nor does the vacation of the Award in 2016 prove one. That neither settling party in 1992 could have foreseen or predicted medical developments—17 years later—does not make the Settlement and Award mistaken.

Because no mistake of fact or law occurred,[1] we agree with the WCCA that no mistaken compensation was paid and thus section 176.179 does not apply.

[1] Block has never argued that section 176.179 applies because there was a mistake in law.

CONCLUSION

For the foregoing reasons, we affirm the decision of the Workers' Compensation Court of Appeals.

Affirmed.