IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert Beary, Petitioner	:	
v.	:	No. 145 C.D. 2009
	:	Submitted: August 7, 2009
Workers' Compensation Appeal Board (Chapin & Chapin, Inc.), Respondent	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE SIMPSON **FILED: September 23, 2009**

In this appeal, Robert Beary (Claimant) asks whether a Workers' Compensation Judge (WCJ) erred in denying his post-commutation reinstatement petition. The WCJ determined Claimant did not prove his allegation that his commutation of benefits was based on a mistake. Claimant challenges this determination. Upon review, we affirm.

In September 1990, Claimant suffered a work-related sacroiliac strain; Chapin & Chapin, Inc. (Employer) issued a notice of compensation payable accepting liability for the injury.

On December 20, 1996, the parties executed a supplemental agreement modifying Claimant's benefits from total to partial disability. On the same date, the Workers' Compensation Appeal Board (Board) approved

Claimant's petition for commutation of his benefits. In particular, the Board approved a total payment of $100,000 to Claimant, consisting of an initial $25,000 lump sum payment, less a counsel fee of $5,000. The remaining $75,000 would be used to purchase a 10-year annuity for Claimant.[1] The annuity paid Claimant $790.00 per month for 120 months beginning March 6, 1997.

Shortly after his annuity payments ceased in March 2007, Claimant filed a reinstatement petition, alleging a worsening of his condition as of May 1, 2007. Alternatively, Claimant alleged his commutation should be set aside based on a mistake in agreement and/or misleading presentation of facts. Employer filed an answer denying the allegations and asserting Claimant's petition was barred by the statute of limitations. Hearings ensued before a WCJ.

Before the WCJ, Claimant did not pursue his allegation that his condition worsened. Indeed, Claimant did not testify his condition worsened, nor did he present medical evidence. Thus, the issues before the WCJ were limited to whether there was a material mistake in the agreement that formed the basis of the commutation of his disability benefits and whether Claimant was misled in the presentation of facts of that agreement. WCJ Op., Finding of Fact (F.F.) No. 8.

Claimant, who was 67 years-old at the time of his testimony, testified he believed the annuity purchased pursuant to the commutation of benefits would provide him with monthly payments during his lifetime, with a 10-year guarantee

[1] Claimant's medical benefits were not affected by the commutation.

of payments to his family should he die during this initial 10-year period. Reproduced Record (R.R.) at 45a, 49a, 52a.

D. Shawn White, Claimant's attorney (Claimant's Counsel), testified he represented Claimant throughout the proceedings that led up to the supplemental agreement and commutation of his disability benefits. Claimant's Counsel conducted the negotiations with Employer's attorney, John B. Bechtol (Employer's Counsel). Both Claimant's Counsel and Employer's Counsel testified before the WCJ concerning their negotiations of the agreement.

Claimant's Counsel testified that throughout the negotiations, he indicated he wanted a lifetime annuity for Claimant. Claimant's Counsel testified he believed the agreement they reached, and the subsequent commutation, included a lifetime annuity payment. He testified that during the 10 years after the Board approved the commutation he continued to assure Claimant his annuity payments would continue during his lifetime. Claimant's Counsel testified had he known the annuity payments would not continue for Claimant's lifetime, there probably would not have been a commutation.

In response, Employer's Counsel testified there were back and forth negotiations followed by an agreement for a 10-year certain annuity. He defined a 10-year certain annuity as payment for 120 months. Employer's Counsel testified there was no suggestion of lifetime payments in the parties' agreement.

Ultimately, the WCJ credited the testimony of Employer's Counsel's over that of Claimant's Counsel. The WCJ noted Employer's Counsel's testimony was supported by the documentary evidence, including the supplemental agreement, Claimant's petition for commutation, the stipulation the parties submitted to the Board regarding the commutation, the Board opinion and order approving the commutation and the annuity contract. The WCJ found there was no agreement for any payment after the 120 annuity payments. The WCJ determined Claimant's Counsel was not misled as to the facts of the parties' settlement agreement and any mistake or error as to these facts was limited to a misunderstanding by him and by Claimant. Thus, the WCJ concluded Claimant did not meet his burden of proving there was a material mistake of fact or that he was misled when his benefits were commuted. The WCJ also concluded Claimant's reinstatement petition was barred by the statute of limitations in Section 413 of the Workers' Compensation Act (Act)[2] because Claimant did not file his petition within three years of the date the Board commuted his benefits.

Claimant appealed, and the Board affirmed. Claimant now appeals to this Court.[3]

Initially, we note, the WCJ's authority over questions of credibility, conflicting evidence and evidentiary weight is unquestioned. Minicozzi v.

[2] Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §772.

[3] Our review is limited to determining whether necessary findings were supported by substantial evidence, whether an error of law was committed or whether constitutional rights were violated. Minicozzi v. Workers' Comp. Appeal Bd. (Indus. Metal Plating, Inc.), 873 A.2d 25 (Pa. Cmwlth. 2005).

Workers' Comp. Appeal Bd. (Indus. Metal Plating, Inc.), 873 A.2d 25 (Pa. Cmwlth. 2005). The WCJ, as fact-finder, may accept or reject the testimony of any witness in whole or in part. Id. We are bound by the WCJ's credibility determinations. Id.

Moreover, "[i]t is irrelevant whether the record contains evidence to support findings other than those made by the WCJ; the critical inquiry is whether there is evidence to support the findings actually made." Delaware County v. Workers' Comp. Appeal Bd. (Baxter Coles), 808 A.2d 965, 969 (Pa. Cmwlth. 2002) (citation omitted). We examine the entire record to see if it contains evidence a reasonable person might find sufficient to support the WCJ's findings. Minicozzi. If the record contains such evidence, the findings must be upheld, even though the record may contain conflicting evidence. Id. This Court cannot, nor will we, consider the existence of other testimony that might support findings different from those found by the WCJ. Id.

Claimant argues the WCJ erred in denying his post-commutation reinstatement petition. In particular, he asserts the record reveals that at the time of the commutation proceedings, a mutual or unilateral mistake existed as to whether he would receive a lifetime benefit, which included 10 years of guaranteed payments, or a 10-year certain annuity. Claimant contends, when viewed as a whole, the record shows Employer mistakenly led him to believe he would receive a lifetime annuity as a result of the commutation.

To that end, Claimant maintains there was a mutual mistake between his Counsel and Employer's Counsel regarding the manner in which they referred to the annuity. Claimant argues the petition for commutation that his Counsel prepared, indicates Claimant sought a 10-year, guaranteed annuity. He points out that Employer's Counsel prepared the stipulation submitted to the Board in support of the commutation and that stipulation refers to the annuity as a 10-year, certain, guaranteed annuity. Claimant asserts it was this misunderstanding of terminology that led to the parties' settlement agreement and, therefore, the commutation of his benefits should be set aside.

In Russo v. Workers' Compensation Appeal Board (Mon/Val Resources, Inc.), 755 A.2d 94, 97 (Pa. Cmwlth. 2000), this Court explained:

> [Section 407 of the Act, 77 P.S. §731], provides that "any agreement ... permitting a commutation of payments contrary to the provisions of this act ... shall be wholly null and void...." A supplemental agreement may be set aside pursuant to section 413 of the Act if the supplemental agreement is "incorrect in any material respect." 77 P.S. §771. With a petition to review a commutation agreement under section 413 of the Act, the WCJ or the [Board] must determine whether a mistake of fact or law was made when the commutation agreement was executed. Hartner v. Workmen's Comp. Appeal Bd. (Phillips Mine & Mill, Inc.), [604 A.2d 1204 (Pa. Cmwlth.), appeal denied, 531 Pa. 662, 613 A.2d 1210 (1992)]. The burden is on the party seeking to set aside the commutation agreement to prove that the agreement was false or materially incorrect. Fulton v. Workers' Compensation Appeal Board (School District of Philadelphia), 707 A.2d 579, 582 (Pa. Cmwlth. 1998).

Further, in the context of a compromise and release agreement (C&R), this Court states, compared to fraud, deception or duress, the test to set aside a C&R agreement on the basis of mutual mistake is more stringent. Farner v. Workers' Comp. Appeal Bd. (Rockwell Int'l), 869 A.2d 1075 (Pa. Cmwlth. 2005). In order for mutual mistake to constitute a basis for invalidating such an agreement, the party seeking to set aside the agreement must prove both parties were mistaken as to a present, material fact that existed at the time the agreement was executed. Id.

Here, the WCJ determined Claimant did not meet his burden of proving a mistake of fact existed when the parties executed the commutation agreement or that he was misled as to the terms of the agreement. Specifically, the WCJ made the following pertinent findings (with emphasis added):

> 11. [Employer's Counsel's] testimony as to the agreement to settle [Claimant's] disability benefits is supported by all of the related documents. The Supplemental Agreement dated December 20, 1996 contains a description of the Settlement Agreement and includes a provision that $75,000.00 will be used to purchase a 10-year certain annuity. The Stipulation which was submitted to the Board and the opinion of the Board includes this provision. The Board ordered that $75,000 be used to purchase a 10-year certain annuity. The annuity contract was sent to [Claimant] by a letter dated February 26, 1996. The annuity provides a period certain annuity of $790.00 for 120 months. It includes a Settlement Agreement/Addendum for these monthly payments which is signed by [Claimant]. The annuity contract specifications include a provision that "Payments will cease after 120 payments have been made." In his Petitions to the Board for commutations [Claimant's Counsel] limited his annuity reference to his statement that the commuted amount would be sufficient

> to acquire a 10-year annuity. There is not a reference to a lifetime annuity or to lifetime payment in any of these documents.
>
> 12. Annuity certain is defined by *Black's Law Dictionary* as: "Payable for [a] specified period; no matter the time of death of the annuitant."
>
> 13. [Employer's Counsel's] testimony as to the settlement and commutation is credible and persuasive. The settlement which he reached with [Claimant's Counsel] was as he testified. There was not an agreement for any payment after the 120 annuity payments.
>
> 14. [Claimant's Counsel] was not [misled] as to the facts of the Settlement Agreement. Any mistake or error as to these facts is limited to misunderstanding by him and by [Claimant].

F.F. Nos. 11-14. Based on these findings, the WCJ determined: "[Claimant] did not meet his burden of showing that there was a material mistake [or that he was misled] when his benefits were commuted. WCJ Op., Concl. of Law No. 2. No error is apparent in the WCJ's determinations.

Specifically, the WCJ credited the testimony of Employer's Counsel, who testified on direct examination as follows (with emphasis added):

> Q. … What did you memorialize [by letter dated December 17, 1996] concerning the terms of the settlement agreement in this case?
>
> A. I memorialized our agreement and that was for a 10 year certain annuity. A 10 year annuity is a payment for 120 months.
>
> Q. Was there any suggestion that there was going to be a lifetime award ---

A. Absolutely not.

Q. --- an annuity that was going to pay 10 years benefits and then for the rest of his life if he lived at least 10 years?

A. That would be something other than a 10 year certain. That would be a 10 year and life. This was agreed to as a 10 year certain. All the documents that I can recall reflected a 10 year certain.

Q. Now, you sent me a copy of the Commutation Petition that was filed in this case? …

A. Yes. That was filed by [Claimant's Counsel].

* * * *

Q. Now, in the language in the petition itself, it appears to say, to acquire a 10 year annuity.

A. That's what it says.

* * * *

Q. Now, paragraph six of the stipulation submitted to the Board [to seek approval of the commutation].

A. Yes.

Q. I'd like to call your attention to that. What language was included in that stipulation concerning the terms of the settlement?

A. Ten year certain.

Q. What does that mean?

A. Ten years, 120 months.

Q. Is there any suggestion that, that means 10 years plus life?

A. No. That would be different terminology.

* * * *

Q. The Supplemental Agreement …. What does it provide concerning the payments that were going to be made to [Claimant] under the terms of this settlement?

A. A 10 year certain.

Q. Is there any ambiguity about what that term means?

A. There was no ambiguity either in the documents or in the negotiation.

Q. And then ultimately there was an Opinion and Order, which was issued by the Appeal Board. And again, in looking at page two, the first paragraph of page two of the opinion of the Board. It appears that the Board also indicated that the proceeds from this settlement are going to be used to purchase for Claimant, a 10 year certain annuity; correct?

A. That's correct.

Q. At any time, did you substitute in the language, the wording, did you do anything at all to suggest that [Claimant] was going to be eligible for a lifetime payment?

A. No. I wouldn't have done that, because that was not the agreement that we had reached.

R.R. at 70a-71a; Notes of Testimony, 11/8/07, at 11-15. As is apparent from the testimony set forth above and, as found by the WCJ, Employer's Counsel's testimony is directly supported by the documentary evidence presented at the hearings. See R.R. at 110a-113a (supplemental agreement); 114a (petition for

commutation); 115a-118a (Board opinion/order approving commutation); 119a-121a (stipulation submitted to Board regarding commutation); 123a-131a (annuity contract and related paperwork). Moreover, the supplemental agreement, the stipulation regarding the commutation, and the annuity contract, all contain Claimant's signature and all reflect Claimant would receive a 10-year certain annuity. R.R. at 110a, 116a, 126a-128a. Therefore, we discern no error in the WCJ's ultimate determination that Claimant did not prove a mutual mistake of fact existed at the time the parties executed the commutation agreement.

Alternatively, Claimant asserts his unilateral mistake that he believed he would receive lifetime annuity payments pursuant to the commutation of his benefits entitles him to relief. In general, a unilateral mistake that is not caused by the fault of the opposing party affords no basis for relief. Farner; Welsh v. State Employees' Ret. Bd., 808 A.2d 261 (Pa. Cmwlth. 2002)). However, "[i]f a party to a contract knows or has reason to know of a unilateral mistake by the other party and the mistake, as well as the actual intent of the parties, is clearly shown, relief will be granted to the same extent as if a mutual mistake existed." Farner, 808 A.2d at 1079 n.5 (quoting Welsh, 808 A.2d at 265) (emphasis added).

Here, Claimant did not present any clear evidence of Employer's intent, and the WCJ made no finding as to Employer's intent. Without supporting evidence and a finding of actual intent, it is impossible for Claimant to carry his burden under the doctrine of unilateral mistake. See Farner. For these reasons, we reject Claimant's argument that he is entitled to relief under a theory of unilateral mistake.

Based on the foregoing, we affirm.[4]

ROBERT SIMPSON, Judge

[4] Claimant also maintains the WCJ erred in determining his reinstatement petition was time-barred. Because no error is apparent in the WCJ's determination that Claimant failed to prove a mistake that would warrant setting aside his commutation of benefits, we need not reach this issue.

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O R D E R

AND NOW, this 23rd day of September, 2009, the order of the Workers' Compensation Appeal Board is **AFFIRMED**.

ROBERT SIMPSON, Judge