IN THE COMMONWEALTH COURT OF PENNSYLVANIA

STROEHMANN BAKERIES, INC., Petitioner	:	
v.	:	No. 1642 C.D. 2000
	:	SUBMITTED: December 1, 2000
WORKERS' COMPENSATION APPEAL BOARD (PLOUSE), Respondent	:	

BEFORE: HONORABLE DORIS A. SMITH, Judge
HONORABLE JAMES R. KELLEY, Judge
HONORABLE SAMUEL L. RODGERS, Senior Judge

OPINION BY
SENIOR JUDGE RODGERS FILED: February 5, 2001

Stroehmann Bakeries, Inc. (Employer) petitions for review of an order of the Workers' Compensation Appeal Board (Board) that affirmed the decision of a workers' compensation judge (WCJ) that dismissed Employer's termination/suspension petition and Joseph Plouse's (Claimant) claim petition as moot based on a conclusion that the parties' signed compromise and release agreement (C&R) controlled any issues between the parties. We affirm.

On September 18, 1995, Claimant[1] filed a claim petition alleging that he initially sustained a work-related injury on November 9, 1994, but that he

[1] By order of this Court, dated September 21, 2000, Claimant's attorney was granted his application to withdraw as counsel and then on October 19, 2000, a dormant order for failure to file a brief was entered.

returned to work. Claimant further alleged that on February 15, 1995, he slipped at work and was re-injured. Although Employer at first denied benefits for the February 15th injury, it subsequently accepted liability and issued a notice of compensation payable (NCP), recognizing the February 15th injury as an injury to Claimant's "thoracic and lumbar area back." (NCP, dated June 5, 1996). Then on January 8, 1997, Employer filed a petition to suspend and/or terminate Claimant's benefits, alleging that Claimant was fully recovered as of October 1, 1996 or was capable of returning to his pre-injury job.

The petitions were consolidated for hearings before WCJ Mark Peleak and were litigated to conclusion. However, before WCJ Peleak issued his decision, the parties agreed to enter a C&R, which was approved by WCJ Karl Baldys on September 14, 1998. The terms of the C&R provided that Claimant would be paid a lump sum of $30,000 in exchange for a release of Employer's liability to pay wage loss and/or medical benefits arising out of the February 15, 1995 injury and that all benefits were to cease as of August 7, 1998.

Despite entering into the C&R, Employer requested that WCJ Peleak still issue his decision, based on the record, which included testimony provided by Claimant on his own behalf and the deposition testimony of Lawrence S. Tomack, M.D., and Theodore F. Them, M.D., both presented by Employer.[2] The WCJ also noted that Claimant presented no medical testimony in opposition to that presented by Employer. Furthermore, pertinent to the issues raised in this case, the WCJ

[2] The WCJ's decision included a finding based on Claimant's testimony that one of Claimant's treating physicians released Claimant to light duty work in September of 1995, but that Employer refused his return without a release to full duty. The WCJ also included findings based on the testimony of Drs. Tomack and Them, both of whom concluded that Claimant was fully recovered from his work injuries.

found that Dr. Them concluded that Claimant was fully recovered as of April 23, 1997. However, the WCJ cited the C&R and concluded in his decision issued on May 26, 1999 that:

> 2. Although the medical evidence submitted by the Employer, Stroehmann Bakeries, shows that the Claimant had recovered from his work injury by April 23, 1997, the parties entered into a compromise and release agreement setting forth that the Claimant would be paid compensation through August 7, 1998 in exchange for a full and complete release of any further benefits, thus the outstanding petitions are moot and the parties should hereinafter be controlled by the compromise and release agreement they have entered into.

(WCJ's decision, p. 4). Accordingly, the WCJ dismissed the petitions as moot and ordered that the C&R controlled.[3] On appeal, the Board affirmed, concluding that the language of the C&R controlled and that Employer can not constructively attempt to amend the C&R by continuing this litigation.[4]

On appeal to this Court,[5] Employer argues that the WCJ and the Board erred in determining that its termination petition was moot and in failing to issue a

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[3] The certified record contains a Board order mailed to the parties on November 23, 1999, indicating that neither party appealed from the WCJ's order approving the C&R. The November 23rd order then provides that Employer's appeal from WCJ Peleak's decision was withdrawn because the C&R disposes of all matters. However, the certified record also contains Employer's letter, dated December 6, 1999, that indicates that the Board's order was in error and requests that the appeal to the Board proceed.

[4] We note that following the approval of the C&R, Claimant essentially withdrew from the continuing litigation, leaving uncontested both Employer's appeal to the Board and to this Court.

[5] Our scope of review in a workers' compensation appeal is limited to determining whether an error of law was committed, constitutional rights were violated, or whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2

(Footnote continued on next page…)

decision on the merits. Employer also argues that, although the WCJ correctly found that evidence supported an earlier date of full recovery, he erred in refusing to rule on the termination petition.

In support of its argument, Employer cites Sections 418[6] and 422(a)[7] of the Workers' Compensation Act (Act). The portion of Section 418 of the Act upon which Employer relies states in pertinent part that:

> The [WCJ] … shall make a record of hearings, and shall make, in writing and as soon as may be after the conclusion of the hearing, such findings of fact, conclusions of law, and award or disallowance of compensation or other order, as the petition and answers and the evidence produced before him and the provisions of this act shall, in his judgment, require.

The portion of Section 422(a) of the Act relied on by Employer states that the parties are entitled to a reasoned decision that requires that "[u]ncontroverted evidence may not be rejected for no reason or for an irrational reason; the workers' compensation judge must identify that evidence and explain adequately the reasons for its rejection."

Based on these sections of the Act and on Employer's allegation that the C&R was not a part of the record before WCJ Peleak, Employer contends that it is entitled to a reasoned decision based solely on the evidence presented by the parties in this case. In the alternative, Employer argues that even if the WCJ could

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(continued…)

Pa. C.S. §704. Russell v. Workmen's Compensation Appeal Board (Volkswagen of America), 550 A.2d 1364 (Pa. Cmwlth. 1988).

[6] Act of June 2, 1915, P.L. 736, added by the Act of June 26, 1919, P.L. 642, as amended, 77 P.S. §833.

[7] Redesignated and amended by the Act of July 2, 1993, P.L. 190, 77 P.S. §834.

consider the C&R, the C&R resolved future issues beyond the September 1998 approval date, while the termination petition, filed on January 7, 1997, sought relief as of that date. As further support for this argument, Employer quotes paragraph 16 of the C&R, which states that "[t]he parties wish to resolve and settle claimant's entitlement to future workers' compensation benefits," and points out that nowhere in the C&R did Employer surrender its right to pursue its termination petition.

We first note that the certified record contains the C&R document. Although our review of the certified record does not provide information as to how the document became a part of the record, the WCJ, the Board and this Court would be remiss if we assumed that the C&R did not exist. Furthermore, Employer fails to quote the response to the directive in paragraph 15 of the C&R,[8] which we set forth as follows:

> 15. State the issues involved in this claim:
> Whether the Claimant's disability from 2-15-95 work-related injury has ceased.

We construe this statement in the C&R to mean that the parties intended to settle the question concerning Claimant's full recovery from his work-related injury, and in turn settle the same exact issue that was before the WCJ at the time the agreement was approved and was likewise the issue raised before the Board and now before this Court. To continue to litigate this selfsame issue after entering into the C&R was, at a minimum, disingenuous on Employer's part. After a full

[8] See Section 449(c)(10) of the Act, added by the Act of June 24, 1996, P.L. 350, 77 P.S. §1000.5(c)(10), which requires that the C&R agreement specify "a disclosure of the issues of the case and the reasons why the parties are agreeing to the agreement."

review of the record before us, we conclude that the WCJ complied with the provision of the Act and provided a reasoned decision based on all the evidence.

We also note Employer's admission as to motive for seeking the decision on the merits of the termination petition even after signing the C&R. Simply stated, with a favorable result, Employer indicated that it intends to apply for reimbursement from the supersedeas fund to recoup the payments made to Claimant for the period between January 7, 1997 (date termination petition filed) and August 7, 1998 (date agreed to by the parties in the C&R to end liability). This is essentially an attempt to place the cost for its agreed to liability on the shoulders of others. Moreover, we recognize that prior to the 1996 amendments to the Act, which provided for C&R agreements, a WCJ could base a decision on stipulations of fact if he or she was satisfied that it was "fair and equitable to [the] parties involved." 34 Pa. Code §131.91. The criteria now requires that the WCJ must determine that the claimant understands the full legal significance of the agreement; the best interests or the fair and equitable standard is no longer a necessary prerequisite. Section 449(b) of the Act, 77 P.S. §1000.5(b). Finally, we believe that the legislature intended that a C&R should be on equal footing with civil settlements, which are based on a public policy that encourages settlements and stresses finality. See Walton v. Avco Corp., 530 Pa. 568, 610 A.2d 454 (1992).

Accordingly, for the reasons stated above, we affirm the Board's order.

SAMUEL L. RODGERS, Senior Judge

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ORDER

NOW, February 5, 2001 , the order of the Workers' Compensation Appeal Board, at No. A99-1915, dated June 16, 2000, is affirmed.

SAMUEL L. RODGERS, Senior Judge