

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ted Meixelsberger,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 539 C.D. 2020
	:	Submitted: June 25, 2021
Workers’ Compensation Appeal	:	
Board (City of Lower Burrell),	:	
Respondent	:	

BEFORE: HONORABLE ANNE E. COVEY, Judge
 HONORABLE J. ANDREW CROMPTON, Judge
 HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE CROMPTON

FILED: August 27, 2021

Ted Meixelsberger (Claimant) petitions this Court for review of a May 13, 2020 Order of the Workers’ Compensation (WC) Appeal Board (the Board) affirming the workers’ compensation judge’s (WCJ) denial and dismissal of his claim against the City of Lower Burrell (Employer) for lack of jurisdiction. Claimant asserts that the Board erred in affirming the WCJ’s decision because Employer violated the WC Act (the Act)¹ when it reduced Claimant’s police pension payments to offset a compromise and release (C&R) agreement between Claimant and Employer, dated March 26, 2013, which was initiated to settle Claimant’s WC

¹ Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §§ 1-1041.4, 2501-2710.

claim against Employer. Before this Court, Claimant raises the narrow issue of whether the WCJ and the Board properly determined that the WCJ lacked jurisdiction over the issues raised in Claimant's Petition for Penalties (Petition). Upon review, we affirm the Order of the Board.

I. Background

On April 18, 2011, Claimant sustained multiple injuries, including damage to his left knee, as a result of a work-related motor vehicle accident during the course of his employment as a police officer for Employer. WCJ Op., 07/02/2019, Findings of Fact (F.F.) No. 1; Reproduced Record (R.R.) at 45a. Following the accident, Claimant received WC benefits for total disability at the rate of \$858.00 per week. F.F. No. 1.

On March 26, 2013, Claimant and Employer executed a C&R agreement, resolving wage loss benefits, medical benefits, and specific loss benefits for a lump sum payment of \$220,000.00. F.F. No. 2. Per the C&R agreement, Employer and its insurance carrier reserved all rights provided by Section 319 of the Act² for any type of third-party recovery, including any claim for uninsured motorist

² Section 319 of the Act, 77 P.S. § 671, reads:

Where the compensable injury is caused in whole or in part by the act or omission of a third party, the employer shall be subrogated to the right of the employe, his personal representative, his estate or his dependents, against such third party to the extent of the compensation payable under this article by the employer; reasonable attorney's fees and other proper disbursements incurred in obtaining a recovery or in effecting a compromise settlement shall be prorated between the employer and employe, his personal representative, his estate or his dependents. The employer shall pay that proportion of the attorney's fees and other proper disbursements that the amount of compensation paid or payable at the time of recovery or settlement bears to the total recovery or settlement. Any recovery against such third person in excess of the compensation theretofore paid by the employer shall be paid forthwith to the employe, his personal representative, his estate or his dependents, and shall

benefits or underinsured motorist benefits that Claimant might recover in the future related to the April 18, 2011 incident. F.F. No. 2. Also, Claimant agreed to voluntarily resign from his employment. Bd. Op., 05/13/2020, at 1. However, this voluntary resignation did not affect his right to apply for a police pension, and he agreed to apply for a police pension on or before April 10, 2013. *Id.*

A WCJ approved the C&R agreement by a decision and order dated April 5, 2013. F.F. No. 2. The parties subsequently executed a Supplemental Agreement dated January 30, 2014, agreeing that Claimant received an uninsured motorist recovery in the amount of \$15,000.00, and that Employer and its WC carrier agreed to accept \$5,000.00 of the recovery as satisfaction of its subrogation rights under Section 319 of the Act. F.F. No. 3.

On or about December 21, 2018, Claimant filed the Petition against Employer and its WC insurer alleging that Employer violated the C&R agreement by recouping payment of the lump sum through reduction of Claimant's monthly police pension benefits. F.F. No. 4. Employer filed an Answer to the Petition, denying Claimant's allegations, and, following a hearing before the WCJ held on March 19, 2019, Employer also requested that the case be bifurcated for the purpose

be treated as an advance payment by the employer on account of any future instalments of compensation.

Where an employe has received payments for the disability or medical expense resulting from an injury in the course of his employment paid by the employer or an insurance company on the basis that the injury and disability were not compensable under this act in the event of an agreement or award for that injury the employer or insurance company who made the payments shall be subrogated out of the agreement or award to the amount so paid, if the right to subrogation is agreed to by the parties or is established at the time of hearing before the referee or the board.

of determining whether the WCJ had jurisdiction over the Petition. F.F. No. 6. The WCJ subsequently granted Employer's request for bifurcation. F.F. No. 6.

The WCJ found that Employer advised Claimant, via correspondence dated April 26, 2018, that his application for a disability pension was approved by Employer's police pension board, with an effective date of April 1, 2013. F.F. No. 7. Claimant was further notified that the benefit amount did not include Employer's right to offset his WC award. F.F. No. 7. Additionally, the correspondence explained that Employer's police pension plan provides the right of subrogation under the Act pursuant to Section 5.05³ of the police pension plan and that, accordingly, Employer would offset Claimant's WC award from his monthly disability pension at the rate of 7.5%, beginning with his June 1, 2018 disability pension payment, and that the offset would continue for the next 725 months. F.F. No. 7.

In evaluating the narrow issue of whether the WCJ has jurisdiction to hear Claimant's allegations of Employer's recouping of the lump sum money through police pension payment deductions, the WCJ determined that there is no jurisdiction to hear such claims under the terms and provisions of the Act. F.F. No. 7. The WCJ explained:

³ Section 505 of Employer's police pension plan reads:

Subrogation Under Worker's Compensation Act or Similar Law — The Police Pension Fund shall be subrogated [sic] to the right of the claimant to the extent that any payments made under the act of June 2, 1915 (P.L. 736, No. 338), known as the "The Pennsylvania [Workers'] Compensation Act" or the Act of June 28, 1935 (P.L. 477, No. 193) referred to as the "Enforcement Officer Disability Benefits Law," or any successor statutes or amendments thereto pursuant to [Section 14303.2 of the Third Class City Code, 11 Pa. C.S. § 14303.2].

Certified Record (C.R.) at 112.

Regarding jurisdiction under [the Act], this [WCJ] is unable to find any term or provision of the Act, its regulations, or any previous Order that has been violated by [] Employer and its [WC] carrier, nor does [] Claimant cite to any specific violation. There is nothing in the record to indicate that [] Employer and its [WC] carrier failed to fulfill all of their obligations under the terms and provisions of the [C&R agreement]. [] Employer's determination of its entitlement to an offset of [] Claimant's [WC] award against his disability pension benefit is a subject matter that appears to be exclusively confined to the administration of [] Employer's Police Pension Plan.

F.F. No. 7.

The Board affirmed the decision of the WCJ, determining that there was no failure by Employer to perform under the C&R agreement. In the Board's view, "Claimant's dispute is with the action of the [police] [p]ension [p]lan, which is not regulated by [the Act]." Bd. Op., 05/13/2020, at 5. The Board further opined: "Claimant testified that [Employer] paid the agreed-upon amount under the C&R [a]greement. The C&R [a]greement provided that Claimant would separate from employment and apply for a pension. It is silent as to a pension benefit offset." *Id.* at 4-5. Claimant now petitions this Court for review.⁴

II. Discussion

Before this Court, Claimant argues that the Board erred in concluding that it lacked jurisdiction over his Petition. Claimant further asserts that because a WCJ approved the C&R agreement, the Board should hear issues related to said agreement, namely whether Employer improperly recouped funds paid pursuant to the C&R agreement through "self help" means. Claimant's Br. at 10. Employer

⁴ Our review is limited to determining whether an error of law was committed, whether necessary findings of fact were supported by substantial evidence, and whether constitutional rights were violated. *Dep't of Transp. v. Workers' Comp. Appeal Bd. (Clippinger)*, 38 A.3d 1037 (Pa. Cmwlth. 2011).

contends that the WCJ correctly determined he lacked subject matter jurisdiction in the instant matter and that Claimant raises issues that must be adjudicated elsewhere.

Neither Claimant nor Employer disagree that Employer's pension board is reducing Claimant's rate of pension based on the WC settlement reached via the C&R agreement; however, the parties disagree as to the basis for the reduction. In Claimant's view, the reduction constitutes a violation of the Act because, as a result of the offset, Claimant has not received the lump sum, as outlined within the C&R agreement, in its entirety. Thus, as Claimant believes that this issue constitutes a violation of the C&R agreement, previously approved by a WCJ, the instant matter should be heard by the WCJ.

In contrast, Employer stresses the fact that the recoupment by Employer of its costs under the C&R agreement has been achieved through a reduction in Claimant's pension payments, not a reduction in the total lump sum payment required under the C&R agreement. As clarified by Employer in its brief, under the terms of the C&R agreement, Claimant "agreed to receive a lump sum payment of \$220,000.00, less a \$44,000.00 attorney fee which was to be deducted and paid over to his attorney, in exchange for releasing [Employer], [its] insurers[,] and administrators from further liability to pay any additional type of [WC] benefits." Employer's Br. at 1; *see* R.R. at 49a-52a. While Claimant's police pension payments were reduced as of June 1, 2018, by a rate of 7.5%, this recoupment by Employer was not executed on the C&R agreement, but, instead, on the Employer-controlled police pension plan. Thus, Employer argues that reduction is not subject to the Act or the jurisdiction of the WCJ.

Claimant argues that this Court's prior decision in *Jones v. Workers' Compensation Appeal Board (City of Chester)*, 961 A.2d 904 (Pa. Cmwlth. 2008),

should be determinative in the instant case. In *Jones*, an injured employee was receiving WC benefits when his employer commenced a reduction in his pension. The employee challenged the reduction offset, arguing that it violated Section 204(a) of the Act.⁵ While the WCJ and the Board determined that jurisdiction over the issue was lacking, our Court reversed, holding that the employee raised the issue of whether the employer's right to a pension offset was governed by the work contract or by Section 204(a) of the Act, establishing the issue within the Board's jurisdiction.

However, the facts in the instant case vary from that of *Jones*. In *Jones*, the employee was actively receiving WC benefits when his pension was reduced,

⁵ Section 204(a) of the Act, 77 P.S. § 11, reads:

No agreement, composition, or release of damages made before the date of any injury shall be valid or shall bar a claim for damages resulting therefrom; and any such agreement is declared to be against the public policy of this Commonwealth. The receipt of benefits from any association, society, or fund shall not bar the recovery of damages by action at law, nor the recovery of compensation under article three hereof; and any release executed in consideration of such benefits shall be void: Provided, however, That if the employe receives unemployment compensation benefits, such amount or amounts so received shall be credited as against the amount of the award made under the provisions of sections 108 and 306, except for benefits payable under section 306(c) [77 P.S. §513] or 307 [77 P.S. §561]. Fifty per centum of the benefits commonly characterized as "old age" benefits under the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 [42 U.S.C. §§ 301-1397mm]) shall also be credited against the amount of the payments made under sections 108 [77 P.S. § 27.1] and 306 [77 P.S. §§ 511-517], except for benefits payable under section 306(c) [77 P.S. §513]: Provided, however, That the Social Security offset shall not apply if old age Social Security benefits were received prior to the compensable injury. The severance benefits paid by the employer directly liable for the payment of compensation and the benefits from a pension plan to the extent funded by the employer directly liable for the payment of compensation which are received by an employe shall also be credited against the amount of the award made under sections 108 [77 P.S. § 27.1] and 306 [77 P.S. §§ 511-517], except for benefits payable under section 306(c) [77 P.S. §513]. The employe shall provide the insurer with proper authorization to secure the amount which the employe is receiving under the Social Security Act.

and he had not entered into a C&R agreement with his employer. The employee experienced a reduction in his pension commensurate with his WC benefits. Claimant in the case presently before this Court was not receiving WC benefits at the time he filed his Petition. In fact, Claimant entered into a C&R agreement, waiving his rights to any claims against Employer for further WC benefits. The deductions from Claimant's police pension payments were not in direct response to his receiving WC benefits, or an attempt to preclude Claimant from receiving WC benefits, but were, instead, an offset resulting from the C&R agreement and a provision, Section 5.05, in Employer's police pension plan.

The Act allows parties to settle claims by a C&R agreement. C&R agreements are on an equal footing with civil settlements, which are based on a public policy that encourages settlements and stresses finality. *Stroehman Bakeries, Inc. v. Workers' Comp. Appeal Bd. (Plouse)*, 768 A.2d 1193, 1196 (Pa. Cmwlth. 2001). An approved C&R agreement is binding upon the parties. It cannot be disavowed absent proof of fraud, deception, duress, or mutual mistake, and renders moot a subsequent petition raising an issue that was settled in the agreement. *N. Penn Sanitation, Inc. v. Workers' Comp. Appeal Bd. (Dillard)*, 850 A.2d 795, 799 (Pa. Cmwlth. 2003).

Section 435 of the Act provides that employers and insurers may be penalized for violations of the Act, its rules and regulations, or rules of procedure. 77 P.S. § 991.⁶ The claimant bears the burden of establishing a violation of the Act or its rules or regulations that appears on the record. *Shuster v. Workers' Comp. Appeal Bd. (Pa. Hum. Rels. Comm'n)*, 745 A.2d 1282, 1288 (Pa. Cmwlth. 2000). In

⁶ Added by the Act of February 8, 1972, P.L. 25.

the instant case, the WCJ determined that Claimant did not meet his burden of proof to demonstrate that Employer violated the Act.

The Board noted in its opinion, and this Court reiterates, that neither party appealed from the initial WCJ order approving the C&R agreement. Notes of Testimony (N.T.), 03/19/19, at 13-14. Claimant takes issue with Employer's subsequent offset of the C&R agreement's lump sum through police pension reductions. The C&R agreement was silent as to this possibility, and Employer cites Section 5.05 of its police pension plan as support for its ability to recoup its costs associated with the C&R agreement. Employer does not seek to utilize the Act as support for its recoupment actions, but, instead, places its decision under the jurisdiction of its own police pension plan.

Thus, Employer argues that Claimant must pursue this issue of recoupment in a court of competent jurisdiction, namely a court of common pleas.⁷ As to the terms of the C&R agreement, both parties agree, and the Board determined, that Employer did not fail to perform. Employer paid Claimant the promised lump sum, less attorney's fees, in exchange for a release from all future WC benefits claims by Claimant. Claimant takes issue with actions separate from the explicit terms of the C&R agreement, bringing this controversy outside of the provisions of the Act and the accompanying jurisdiction of the WCJ or the Board.

Claimant challenges his police pension payments from Employer, not Employer's satisfaction of the C&R agreement under the Act. The Act confers upon

⁷ Claimant received notice that the police pension board intended to reduce his pension via correspondence dated April 26, 2018. R.R. at 92a. Claimant filed a written challenge to the reduction with the police pension board via correspondence dated July 23, 2018. *Id.* at 94a. The police pension board considered the challenge, but it reaffirmed the pension rate reduction and provided notice of this decision via a letter dated October 10, 2018. *Id.* at 96a. Claimant never appealed the decision of the police pension board, instead bringing the Petition, which is the subject of the instant case, before the WCJ, and, subsequently, the Board.

the Board and WCJ jurisdiction to determine disputes explicitly related to a claim for WC benefits. *See* Sections 410-411 of the Act, 77 P.S. §§ 751-752. While neither Claimant nor Employer denies that Claimant has experienced a reduction in his police pension payments, Claimant's dispute does not relate to a claim for WC benefits, and, as a result of the C&R agreement, Claimant is not eligible to pursue further WC benefits. Therefore, the WCJ did not err in dismissing Claimant's Petition for lack of jurisdiction.

III. Conclusion

For the foregoing reasons, we affirm the Order of the Board.

J. ANDREW CROMPTON, Judge

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Board (City of Lower Burrell),	:	
Respondent	:	

ORDER

AND NOW, this 27th day of August 2021, we **AFFIRM** the May 13, 2020 Order of the Workers' Compensation Appeal Board.

J. ANDREW CROMPTON, Judge