

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JVP Trucking, Inc., :
 :
 Petitioner :
 :
 v. : No. 462 C.D. 2009
 :
 Workers' Compensation : Submitted: June 19, 2009
 Appeal Board (Worthley), :
 Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
 HONORABLE JOHNNY J. BUTLER, Judge
 HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY SENIOR JUDGE KELLEY

FILED: September 24, 2009

JVP Trucking, Inc. (Employer) petitions for review of an order of the Workers' Compensation Appeal Board (Board), which affirmed the decision of a workers' compensation judge (WCJ) denying Employer's Petition to Review Compensation Benefit Offset (Review Offset Petition). We affirm.

The facts of this case are as follows. On September 20, 2004, Tamara Worthley (Claimant) sustained an injury in the course and scope of her employment with Employer. As a result of her injury, Claimant filed two personal injury actions against third-parties. During the pendency of the third party litigation, Employer and Claimant entered into a Compromise and Release Agreement (C&R) pursuant to Section 449 of the Workers' Compensation Act

(Act),¹ which was approved by the WCJ by decision and order circulated January 18, 2007. The C&R included an agreement as to the subrogation interest. Following the approval of the C&R, Claimant settled her claim against the third parties. Employer attempted to assert a lien against Claimant's third party settlement and a dispute between the parties arose.

On July 31, 2007, Employer filed a Review Offset Petition alleging that as of June 1, 2007, it was owed a credit for subrogation. Employer asserted that Claimant released Employer via the approved C&R in exchange for partial waiver of its \$162,182.79 subrogation lien equal to the lump sum payment of \$70,000 and that pursuant to paragraph 11 of the C&R, Employer maintained its lien for the balance of the total payout of \$92,182.79. Employer further asserted that Claimant recovered \$35,000 from the third parties and failed to satisfy Employer's lien. Claimant filed an answer denying the allegations of the Review Offset Petition. The matter was heard before a WCJ.

At the hearing, Employer presented documentation that their subrogation lien totaled \$162,182.79. Claimant and Employer presented the approved C&R, which resolved Claimant's claim for a lump sum of \$70,000, less 20 percent attorney's fee. As part of the C&R, Employer and its insurance carrier, State Workers' Insurance Fund (SWIF) "agreed to waive its subrogation lien up to the amount of the Compromise & Release Settlement (\$70,000), however, asserts a lien for any sum recovered over the sum of \$70,000." In the Addendum to the C&R, addendum to item no. 7, SWIF agreed:

to waive its subrogation lien in the amount of **\$70,000.00**
ONLY against any third party recovery obtained by

¹ Act of June 2, 1915, P.L. 736, added by Section 22 of the Act of June 24, 1996, P.L. 350, as amended, 77 P.S. § 1000.5.

Claimant in the matters of Tamara Worthley v. Industrial Investments, Inc. et al., No. 0606958-30-2, Bucks County, PA; and Tamara Worthley v. Rockwell Transportation Services, Inc., No. 0601246, Bucks County, Pa. Any amount over the sum of \$70,000.00 which is recovered by the Claimant is subject to a subrogation lien asserted by SWIF.

(Emphasis in original).

Claimant testified that she understood that by entering the C&R, she was settling her workers' compensation claim against Employer in the amount of \$70,000 minus attorney's fees and that Employer was waiving its subrogation interest in the first \$70,000 of that claim; any amount of the lien above \$70,000 that SWIF had would be asserted against the proceeds, if any, of the third party claim.

The WCJ found the language regarding subrogation interest to be ambiguous. The WCJ determined that since Employer/SWIF drafted the C&R, it waived its subrogation interest in the first \$70,000 of Claimant's third party recovery of \$35,000.

By order dated January 9, 2008, the WCJ denied Employer's Review Offset Petition. The WCJ found that Employer failed to establish that it was entitled to a subrogation interest in the first \$70,000 of Claimant's third party action as Claimant received less than \$70,000 when she received \$35,000 in the third party settlement.

From this decision, Employer filed an appeal with the Board. While the Board determined that the WCJ did not err in denying Employer's Review Offset Petition, the Board did not agree with the WCJ's finding that the language in the C&R concerning subrogation is ambiguous. Rather, the Board determined that the language that Employer/SWIF "agreed to waive its subrogation lien up to the

amount of the Compromise & Release Settlement (\$70,000), however, asserts a lien for any sum recovered over the sum of \$70,000” is clear and further clarified by the addendum. By order dated February 24, 2009, the Board affirmed. This appeal now follows.² Employer raises the following issues for our review:³

1. Whether the WCJ erred in finding that Employer failed to sustain its burden on the Review Offset Petition showing that Claimant owes funds from her third party action to Employer based on the lien asserted in connection with the C&R.
2. Whether the WCJ failed to issue a reasoned decision supported by substantial, competent evidence as required by Section 422 of the Act, 77 P.S. §834.

First, Employer contends that the WCJ erred in finding that Employer failed to show that Claimant owes funds from her third party action to Employer based on the lien asserted in the C&R. We disagree.

Section 449 of the Act, 77 P.S. §1000.5, governs the compromise and release of workers’ compensation claims. This section provides that settlement agreements are not valid until they are approved by a WCJ. Section 449 of the Act. “The workers’ compensation judge shall not approve any compromise and release agreement unless he first determines that the claimant understands the full legal significance of the agreement.” *Id.* Once approved, a valid compromise and

² This Court's scope of review is limited to determining whether there has been a violation of constitutional rights, errors of law committed, or a violation of appeal board procedures, and whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704; Lehigh County Vo-Tech School v. Workmen's Compensation Appeal Board (Wolfe), 539 Pa. 322, 652 A.2d 797 (1995).

³ While Employer did not include in its brief a “Statement of Questions Involved” as required by Rules 2111 and 2116 of the Pennsylvania Rules of Appellate Procedure, the issues are included in the Petition for Review and are clearly set forth in the Table of Contents, Summary of the Argument, and Argument sections of Employer’s brief.

release is final, conclusive and binding upon the parties. North Penn Sanitation, Inc. v. Workers' Compensation Appeal Board (Dillard), 850 A.2d 795 (Pa. Cmwlth. 2004).

Pursuant to Section 319 of the Act, 77 P.S. §671, an employer who has paid compensation to a claimant injured by a third party is subrogated to the right of the claimant against such third party and the employer has an absolute right to immediate payment of its subrogation lien from the claimant's recovery against the third party, after payment of fees and expenses. The purpose for this right of subrogation is threefold: to prevent double recovery for the same injury by the claimant, to ensure that the employer is not compelled to make compensation payments made necessary by the negligence of a third party, and to prevent a third party from escaping liability for his negligence. Dale Manufacturing Co. v. Bressi, 491 Pa. 493, 421 A.2d 653 (1980). An employer's subrogation rights are statutorily absolute and can be abrogated only by choice. Winfree v. Philadelphia Electric Co., 520 Pa. 392, 554 A.2d 485 (1989); Growth Horizons, Inc. v. Workers' Compensation Appeal Board (Hall), 767 A.2d 619 (Pa. Cmwlth. 2001). An employer can waive or compromise its subrogation rights by written agreement. Growth Horizons.

In this case, Employer compromised its subrogation rights in the C&R. Employer agreed to waive its subrogation lien up to the amount of \$70,000, but asserted "a lien for any sum recovered over the sum of \$70,000." Employer contends that Claimant understood that Employer only waived the first \$70,000 of the lien according to her testimony at the hearing on the C&R. Contrary to Employer's assertions, Claimant's testimony from the C&R hearing does not clearly support Employer's position. At the hearing, Claimant's counsel asked Claimant:

Q. We have a third-party claim and the workers' compensation carrier is waiving their subrogation interest in the first \$70,000 of that claim.

A. Yes.

Notes of Testimony (N.T.), January 17, 2007, at 12. There was no objection from defense counsel as to this testimony. On cross examination, defense counsel did not indicate there was any misunderstanding or misinterpretation of the C&R.

Defense counsel asked Claimant:

Q. Just to follow-up on Claimant's Counsel's question, you understand that SWIF has agreed with regard to this subrogation lien regarding a third-party case, to waive the first \$70,000 of the lien that it has against that case; do you understand that?

A. Yes.

Q. Okay, so that any amount of the lien above \$70,000.00 that SWIF has will still be asserted against the proceeds, if any, of the third party case, correct?

A. Yes.

N.T., January 17, 2007, at 12.

Even assuming that Claimant's testimony supports Employer's interpretation, the C&R speaks for itself. We agree with the Board that the C&R is not ambiguous. Employer/SWIF, by the plain language of the C&R, waived its subrogation interest in the first \$70,000 of Claimant's third party recovery of \$35,000. Since Claimant did not recover a sum over the sum of \$70,000, Employer is not entitled to subrogation.

As the WCJ and Board aptly observed, had Employer intended to reduce its \$162,182.79 subrogation lien by \$70,000 to \$92,182.79, it could have succinctly stated that objective without any need to reserve its lien on any recovery over \$70,000. Since Employer/SWIF is the drafter of the C&R, any ambiguities

must be construed against it. Lusby v. Workers' Compensation Appeal Board (Fischler Co. & Sparmon, Inc.), 976 A.2d 1230 (Pa. Cmwlth., No. 804 C.D. 2008, filed July 09, 2009); State Public School Building Authority v. Noble C. Quandel Co., 585 A.2d 1136 (Pa. Cmwlth. 1991). We, therefore, conclude that the WCJ did not err in determining that Employer failed to meet its burden on the Review Offset Petition.

Employer further contends that the WCJ failed to issue a reasoned decision supported by substantial, competent evidence as required by Section 422 of the Act, 77 Pa. C.S. §834. We disagree.

Section 422(a) of the Act provides, in pertinent part, that “[a]ll parties to an adjudicatory proceeding are entitled to a reasoned decision containing findings of fact and conclusions of law based upon the evidence as a whole which clearly and concisely states and explains the rationale for the decisions so that all can determine why and how a particular result was reached...”, and “[t]he adjudication shall provide the basis for meaningful appellate review... .” 77 P.S. §834. A WCJ’s decision is “reasoned” for purposes of Section 422(a) of the Act if it allows for adequate review by the Board without the need for further elucidation, and if it allows for adequate review by the appellate courts under their standards of review. In Daniels v. Workers’ Compensation Appeal Board (Tristate Transport), 574 Pa. 61, 76, 828 A.2d 1043, 1051 (2003).

Here, Employer claims that the WCJ’s decision is not reasoned because the same WCJ that reviewed and approved the C&R later found the C&R to be ambiguous. While the WCJ agreed with Claimant’s interpretation of the C&R that Employer was waiving its subrogation interest in the first \$70,000 of the third-party claim, the WCJ recognized that Employer had a different understanding of the agreement, and ultimately found that the C&R was ambiguous. In doing so,

the WCJ still issued a reasoned decision. The WCJ's decision contains necessary findings of facts and conclusions of law based upon the evidence as a whole. The WCJ reviewed the evidence presented and summarized the testimony of Claimant as to her understanding of the C&R. The WCJ's decision sets forth the rationale for the decision and provides a basis for meaningful appellate review. We, therefore, conclude that the WCJ's decision meets Section 422(a)'s reasoned decision requirement.

Accordingly, the order of the Board is affirmed.

JAMES R. KELLEY, Senior Judge

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ORDER

AND NOW, this 24th day of September, 2009, the order of the Workers' Compensation Appeal Board, dated February 24, 2009, at No. A08-0095, is AFFIRMED.

JAMES R. KELLEY, Senior Judge