IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Allegheny Airlines and Sedgwick CMS, Petitioners	:	
v.	:	No. 840 C.D. 2008
Workers' Compensation Appeal Board (Mason), Respondent	:	Submitted: October 10, 2008

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY FILED: November 19, 2008

Allegheny Airlines and Sedgwick CMS (hereinafter collectively referred to as "Employer") petition for review of an order of the Workers' Compensation Appeal Board (Board) which affirms the Workers' Compensation Judge's (WCJ) decision denying Employer's Application for Supersedeas Fund Reimbursement. We affirm.

The issue in this appeal is whether the WCJ erroneously denied Employer's Application for Supersedeas Fund Reimbursement when Employer's underlying termination petition had been granted after the approval of a compromise and release agreement (C&R) between Employer and Alonzo Mason (Claimant) that only settled future liability for Claimant's work-related injury.

The facts in this matter are as follows: Employer filed a termination petition seeking to terminate Claimant's worker's compensation benefits as of

August 13, 2003. Therein, Employer included a request for supersedeas which was denied on May 21, 2004.

During the pendency of the termination petition, Employer filed a Petition to Seek Approval of a Compromise and Release. The C&R contained, *inter alia*, the following express language:

> The claimant is to receive a lump sum amount of $30,000.00, less attorney's fees of $6,000.00 in full satisfaction of any past, present or future obligations of [Employer] to pay workers' compensation benefits of any kind as a result of the alleged 12/22/99 and/or other injuries listed.

Reproduced Record (R.R.) at 14.

The C&R further provided the following reasons as to why the parties were entering into the agreement:

> (1) The claimant desires to resolve this case and seek other opportunities; and
>
> (2) Both parties desire to resolve the disputed claim without protracted and uncertain litigation.

Id.

On June 26, 2006, the C&R was approved by WCJ Gilbert without amendment.[1] Id. at 11. In the order approving the C&R, WCJ Gilbert stated that

[1] Pursuant to Section 449 of the Workers' Compensation Act, Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §1000.5, added by Act of June 24, 1996, P.L. 350, a proposed compromise and release may be submitted, through the filing of a petition, to a WCJ for approval. Section 449 further provides that the WCJ shall consider the petition and the proposed compromise and release in open hearing and shall render a decision. "The [WCJ] shall not approve any compromise and release unless he or she first determines that the claimant understands the full legal significance of the agreement." Section 449 of the Act. Once approved, a valid compromise and release agreement is final and binding on the parties. Farner v. Workers' Compensation Appeal Board (Rockwell International), 869 A.2d 1075 (Pa. *(Continued....)*

Employer's termination remained pending. WCJ Gilbert stated in the background portion of his decision that Employer's termination petition remained pending because of a missing exhibit and that "[t]he parties also agreed that the Judge would proceed to issue a decision on the merits of the Termination Petition, essentially dealing with the situation existing prior to the hearing. Accordingly, that matter will be addressed by separate decision." Id. at 9. On September 1, 2006, WCJ Gilbert circulated a decision granting Employer's termination petition and terminating Claimant's benefits effective August 13, 2003.

On or about October 11, 2006, Employer filed an Application for Supersedeas Fund Reimbursement alleging that a request for supersedeas was filed on February 3, 2004, in connection with its termination petition and that supersedeas was denied as of May 21, 2004. Employer alleged that it continued payment of compensation from August 13, 2003, until the final outcome of the proceedings on September 1, 2006. Employer requested a total of $46,872.00 in overpayment of compensation and $5,958.43 in overpayment of medical bills. The Commonwealth of Pennsylvania Bureau of Workers' Compensation (Bureau) filed an answer denying entitlement to reimbursement. Therein, the Bureau alleged that the C&R specifically provided that Claimant would receive a lump sum payment "in full satisfaction of any past, present or future obligations" of Employer in connection with the work injury. Accordingly, the Bureau concluded that reimbursement was not appropriate and moved that the Application be dismissed.

A hearing on Employer's Application for Supersedeas Fund Reimbursement was held before the WCJ Bloom on February 16, 2007. By decision circulated August 1, 2007, WCJ Bloom denied Employer's Application

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Cmwlth.), petition for allowance of appeal denied, 586 Pa. 730, 890 A.2d 1061 (2005).

for Supersedeas Fund Reimbursement based on the evidence submitted and the terms of the C&R. Employer appealed WCJ Bloom's decision and the Board affirmed based on this Court's decision in Bureau of Workers' Compensation v. Workers' Compensation Appeal Board (US Food Service), 932 A.2d 309 (Pa. Cmwlth. 2007).[2] This appeal followed.[3]

Herein, Employer argues that the Board's decision affirming WCJ Bloom's decision denying its Application for Supersedeas Fund Reimbursement should be reversed due to the expressed intent of the parties in the C&R to settle only future benefits thereby preserving the right to seek reimbursement of any benefits paid during the underlying termination petition proceedings. Employer contends that this Court's decision in US Food Service is distinguishable on several grounds with the foremost distinction being there was no express preservation to hold the underlying termination petition open by either party or the WCJ when the C&R was approved. In this case, Employer points out, WCJ Gilbert not only did not dismiss the underlying termination petition, he issued a thorough and lengthy decision four months later on the actual merits of the petition. Employer argues that it is abundantly clear by the two decisions circulated by WCJ Gilbert that the parties intended to allow him to issue a separate decision on the merits of the underlying termination petition.

Employer contends further that the controlling decision in this matter is this Court's decision in Coyne Textile v. Workers' Compensation Appeal Board (Voorhis), 840 A.2d 372 (Pa. Cmwlth. 2003), wherein this Court held that the

[2] Since our decision in US Food Service was not filed until August 22, 2007, WCJ Bloom did not have the benefit of that decision when he issued his August 1, 2007, decision and order.

[3] By order of October 7, 2008, Claimant was precluded from filing a brief in this matter.

principal focus of determining whether a compromise and release agreement precludes a subsequent Application for Supersedeas Reimbursement should be on the "motive" for requesting a separate adjudication of the underlying termination petition. Employer contends that there is not a scintilla of evidence in the record to suggest that it had any other motive other than allowing WCJ Gilbert to issue a genuine adjudication on the merits of the underlying termination petition and had only settled the case given the delay caused by the missing exhibit.

Finally, Employer argues that the parties herein intended to resolve only future benefits as evidenced by the fact that WCJ Gilbert stated in his decision approving the C&R that the termination petition remained pending. Therefore, Employer contends, the Application for Supersedeas Fund Reimbursement should have been granted.

Upon review, we conclude that the Board did not err by affirming WCJ Bloom's decision denying Employer's Application for Supersedeas Fund Reimbursement.[4] Notwithstanding Employer's assertion that US Food Service is distinguishable from the present case, as determined by the Board, this matter is controlled by our decision in US Food Service.

Section 443 of the Act, 77 P.S. §999, governs reimbursement from the supersedeas fund and reads in pertinent part as follows:

> (a) If, in any case in which a supersedeas has been requested and denied under the provisions of Section 413 . . . , payments of compensation are made as a result thereof and upon the final outcome of the proceedings, it

[4] 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. Lehigh County Vo-Tech School v. Workmen's Compensation Appeal Board (Wolfe), 539 Pa. 322, 652 A.2d 797 (1995).

> is determined that such compensation was not, in fact, payable, the insurer who has made such payments shall be reimbursed therefor. . . .
>
> (b) There is hereby established a special fund in the State Treasury, . . . to be known as the Workmen's Compensation Supersedeas Fund. The purpose of this fund shall be to provide moneys for payments pursuant to subsection (a), ... The department shall be charged with the maintenance and conservation of this fund. . . .

Accordingly, by the plain language of Section 443, the following criteria are established by the General Assembly for payments from the Fund:

> 1. A supersedeas must have been requested;
> 2. The request for supersedeas must have been denied;
> 3. The request must have been made in a proceeding under Section 413[5] of the Act;
> 4. Payments were continued because of the order denying the supersedeas; and
> 5. In the final outcome of the proceedings it is determined that such compensation was not, in fact, payable.

See Bureau of Worker's Compensation v. Workers' Compensation Appeal Board (Insurance Company of North America), 516 A.2d 1318, 1320 (Pa. Cmwlth. 1986).

As in the instant case, the issue in US Food Service, was whether a WCJ's decision granting a termination petition or a WCJ's decision approving a compromise and release agreement was the final outcome of the proceeding. This Court, after reviewing and interpreting such cases as Coyne, Bethlehem Structural Products v. Workers' Compensation Appeal Board (Vernon), 789 A.2d 767 (Pa. Cmwlth. 2001), petition for allowance of appeal denied, 568 Pa. 706, 796 A.2d 986

[5] 77 P.S. §772.

(2002), and Stroehmann v. Workers' Compensation Appeal Board (Plouse), 768 A.2d 1193 (Pa. Cmwlth. 2001), held as follows:

> This Court has had the opportunity to review the effect of a C&R on Supersedeas Fund Reimbursement based on an order entered after a C&R was approved. In *Stroehmann*, cited by the Board, the terms of the C&R provided a full and complete release of liability. There, the employer filed a termination petition alleging that the claimant had fully recovered from his injuries. A WCJ subsequently held hearings, but the parties entered into a C&R in which the claimant accepted a lump sum payment in exchange for the release of all liability. *Stroehmann, 768 A.2d at 1194*. Notwithstanding the WCJ's approval of the C&R, the employer requested that the WCJ still issue an opinion and order on the termination petition based upon the medical evidence of record entered by the employer. *Id.* The WCJ dismissed the termination petition as moot, concluding that the C&R resolved the issue of all wage loss and benefits arising out of the original injury. *Id. at 1195*. On appeal, the Board affirmed, noting that the employer should not be permitted to constructively amend the C&R by attempting to continue the litigation settled by the C&R agreement itself. *Id.* Upon the employer's petition to this Court for review of the Board's order in *Stroehmann*, we affirmed the Board's conclusion that the issue in the employer's termination petition - namely, claimant's alleged full recovery from his work-related injury - was the same issue settled in the parties' C&R. *Id. at 1196*.
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> A different case arises, however, where the C&R expressly contains a provision that a particular petition or issue shall remain open after the C&R is executed and approved. In *Bethlehem Structural Products v. Workers' Compensation Appeal Board (Vernon), 789 A.2d 767 (Pa. Cmwlth. 2001)*, and *Coyne Textile v. Workers' Compensation Appeal Board (Voorhis), 840 A.2d 372 (Pa. Cmwlth. 2003)*, the C&R agreements did not release all liability. In *Bethlehem*, the C&R contained an express provision that the employer would not withdraw the appeal regarding the correct calculation of the average

weekly wage. *Id. at 770*. Further, the lump sum payment resolved only future liability. *Id.* Similarly, in *Coyne*, by the express terms of the C&R, the termination and challenge petitions were to remain open and be adjudicated, and the reinstatement and review petitions were to be discontinued and withdrawn. *Id. at 374*. We, therefore, found that the C&R did not render the issues in the termination petition moot and, thereby, reversed and remanded.

Here, the C&R contains very broad release language: "all . . . past, present and future" benefits. (C&R, Continuation AP 7.) It also states that the "parties wish to avoid . . . additional litigation" and that "[Employer] wish[es] to extinguish all liability . . . ." (C&R AP 15.) Unlike in *Coyne* or *Bethlehem Structural Products*, the express terms of the C&R do not provide that the Termination Petition remains open. Like in *Stroehmann*, where the employer argued that nowhere in the C&R did it "surrender" its rights to pursue the termination petition, here, the Board agreed with a similar argument made by Employer. Here, the Board found that, although the C&R did not contain specific language reserving the right to continue litigation on the Termination Petition, the Termination Petition remained outstanding on the docket with no evidence showing that Employer intended to withdraw the Termination Petition, even in light of the C&R. (Board Opinion at 4, September 27, 2006.) However, we disagreed with the employer in *Stroehmann*, and found the parties intended to settle the issue of Claimant's full recovery from his work-related injury. Here, too, we believe that the parties intended to settle all outstanding issues because the C&R states that it fully resolved all "past, present and future" benefits. (C&R, Continuation AP 7 (emphasis added).) This C&R broadly includes all outstanding litigation with such all-encompassing language. Employer, here, did not specifically reserve the right to continue litigation of the Termination Petition, which was filed prior to the execution of the C&R. Therefore, the C&R resolved all outstanding litigation, including the Termination Petition.

> . . . . [T]he C&R is a settlement agreement between the parties of "any and all liability" under the Act, and judicial approval of the agreement is determined in a separate proceeding before a WCJ. [*Section 449 of the Act*,] *77 P.S. § 1000.5(a)-(b)*. In essence, the C&R, once approved by the WCJ, is the final decision in a workers' compensation case, ... The hallmark of a compromise and release is finality. As we said in *Stroehmann*, "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." *768 A.2d at 1196*.

US Food Service, 932 A.2d at 314-15.

Although WCJ Gilbert stated in his June 26, 2006, decision approving the C&R in this case that Employer's termination petition remained pending and later issued a decision and order granting the termination petition, it is clear from the plain language of the approved C&R that the C&R was the "final outcome of the proceedings." As stated previously herein, the C&R approved by WCJ Gilbert contains the following express language: "The claimant is to receive a lump sum amount of $30,000.00, less attorney's fees of $6,000.00 *in full satisfaction of any past, present or future obligations of [Employer]* to pay workers' compensation benefits of any kind as a result of the alleged 12/22/99 and/or other injuries listed." R.R. at 14 (emphasis added). As in US Food Service, the C&R in this case broadly includes all outstanding litigation with such all-encompassing language. The C&R further provides that the reasons why the parties were entering into the agreement were: "(1) the claimant desires to resolve this case and seek other opportunities; and (2) *both parties desire to resolve the disputed claim without protracted and uncertain litigation*." Id. (emphasis added). Accordingly, the express terms of the C&R do not provide that the underlying termination petition

remained opened. As such, Employer's reliance on Coyne, as discussed in US Food Service, is misplaced.

Moreover, the fact that WCJ Gilbert noted in the June 26, 2006, decision that Employer's termination petition remained pending before him does not modify the foregoing language of the C&R or alter the finality of the C&R. It is axiomatic that a C&R, once approved by a WCJ, is the final decision in a workers' compensation case. US Food Service; Farner. We note further that Employer in this matter, like the employer in US Food Service, did not specifically reserve the right to continue litigation of the termination petition in the C&R. The parties' alleged agreement, as stated by WCJ Gilbert in his decision, to permit the WCJ to proceed to issue a decision on the merits of the termination petition is insufficient to alter the express language of the approved C&R. If the parties did in fact intend for the decision on the termination petition to be the "final outcome of the proceeding", they should have reserved that right in the C&R and included such express language to that effect instead of the specific language employed that clearly expresses a different intent.

Therefore, the Board did not err by concluding that the C&R resolved all outstanding litigation, including the pending termination petition. Accordingly, the Board's order is affirmed.

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JAMES R. KELLEY, Senior Judge

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O R D E R

AND NOW, this 19th day of November, 2008, the order of the Workers' Compensation Appeal Board in the above captioned matter is affirmed.

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JAMES R. KELLEY, Senior Judge