

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gabriel Araya a/k/a F & G General	:
Contractors, Inc. and State Workers'	:
Insurance Fund,	:
Petitioners	:
	:
v.	: No. 998 C.D. 2010
	: Submitted: October 22, 2010
Workers' Compensation Appeal	:
Board (Jose Alberto Salas Cordero,	:
dec'd and Anna Maria Saldana	:
Gamboa, wife and executrix),	:
Respondents	:

BEFORE: HONORABLE DAN PELLEGRINI, Judge
 HONORABLE P. KEVIN BROBSON, Judge
 HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: December 22, 2010

Gabriel Araya a/k/a F & G General Contractors, Inc. and State Workers' Insurance Fund (collectively, Employer) appeal from the decision of the Workers' Compensation Appeal Board (Board) in favor of Jose Alberto Salas Cordero (Decedent) and Anna Maria Saldana Gamboa (Claimant), the Decedent's widow. Specifically, Employer alleges that the Board granted Claimant twice the compensation that is permitted by law. For the reasons that follow, we affirm.

Claimant filed a claim petition alleging that she is the widow of the Decedent who died as a result of head trauma sustained while in the course and scope of his employment with Employer. Claimant's address was listed as a street in San Isidro, Costa Rica. Employer filed an answer denying the allegations in the claim petition and allegedly served a copy of its answer on Claimant at the address in Costa Rica. The parties entered into a stipulation providing, among other things, that the Decedent indeed sustained a head injury leading to his death while working for Employer, and that his average weekly wage at the time of the injury was \$900. The stipulation went on to provide that Claimant was entitled to benefits of \$540 per week from December 3, 2007, until October 4, 2008, and weekly benefits of \$459 thereafter. There was no mention in the stipulation of Claimant's Costa Rica address. The stipulation also stated that it resolved the claim in its entirety. The Workers' Compensation Judge (WCJ) disposed of the claim consistent with the terms of the stipulation.

Employer appealed to the Board alleging that the stipulated compensation to Claimant was twice the legal limit because, due to a typographical error, Section 310 of the Workers' Compensation Act (Act), regarding halving the compensation to alien widows, had not been applied.¹ The Board affirmed, reasoning that Employer had notice that Claimant might be an alien widow based on her Costa Rica address but had nevertheless stipulated to the full amount of

¹ Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §563. Section 310 of the Act provides, in relevant part: "Alien widows, children and parents, not residents of the United States, shall be entitled to compensation, but only to the amount of fifty per centum of the compensation which would have been payable if they were residents of the United States."

compensation and, as such, had waived any objection based upon Section 310 of the Act. Employer then appealed to this Court.²

On appeal, Employer contends that the failure to apply Section 310 to the stipulation was a typographical error. Employer informed the WCJ of the error, and it was the WCJ's obligation to correct it pursuant to 34 Pa. Code §131.112(a),³ so that Claimant would only receive half the compensation the parties stipulated to. Otherwise, Claimant would receive twice the compensation allowed by law.

Employer is confused as to what a typographical error is. Typing “eror” instead of “error” or writing “\$3,030” instead of “\$3,300” are examples of typographical errors, but failing to take into account the requirements of a statute before entering into a stipulation is not. More importantly, there is no evidence in the record before us to show that Claimant is an alien widow rather than an

² This Court's review is limited to determining whether an error of law was committed, whether necessary findings of fact are supported by substantial evidence and whether constitutional rights were violated. *Sysco Food Services of Philadelphia v. Workers' Compensation Appeal Board (Sebastiano)*, 940 A.2d 1270 (Pa. Cmwlth. 2008).

³ 34 Pa. Code §131.112(a) provides:

A decision or an order of a [workers' compensation] judge may be amended or corrected by the judge subsequent to the service of notice of the decision and order. A typographical or clerical error or obvious omission or error on the part of the judge may be corrected on the judge's motion or on the motion of one of the parties. Other amendments or corrections will be made only upon written agreement of the parties. A request for correction or amendment shall be made within 20 days of the date of service of notice of the decision and order.

American citizen residing abroad. This information would have been simple to prove, but Employer never attempted to do so. Employer, instead, entered into a stipulation and must live with the consequences of that decision.

Accordingly, the order of the Board is affirmed.

DAN PELLEGRINI, JUDGE

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gabriel Araya a/k/a F & G General	:
Contractors, Inc. and State Workers'	:
Insurance Fund,	:
Petitioners	:
	:
v.	: No. 998 C.D. 2010
	:
Workers' Compensation Appeal	:
Board (Jose Alberto Salas Cordero,	:
dec'd and Anna Maria Saldana	:
Gamboa, wife and executrix),	:
Respondents	:

ORDER

AND NOW, this 22nd day of December, 2010, the order of the Workers' Compensation Appeal Board, dated May 6, 2010, is affirmed.

DAN PELLEGRINI, JUDGE