

CASE NO. 5812 CRB-4-12-12
CLAIM NO. 400068636

: COMPENSATION REVIEW BOARD

THOMAS S. MURRAY
CLAIMANT-APPELLANT

: WORKERS' COMPENSATION
COMMISSION

v.

: DECEMBER 11, 2013

TOWN OF STRATFORD
SELF-INSURED
EMPLOYER
RESPONDENT-APPELLEE

and

PMA MANAGEMENT CORP. OF NE
ADMINISTRATOR

APPEARANCES:

The claimant was represented by Daniel P. Hunsberger, Esq., Maurer & Associates, PC, 871 Ethan Allen Highway, Ridgefield, CT 06877.

The respondent was represented by John A. Florek, Esq., Florek & O'Neill, 2885 Main Street, Stratford, CT 06614.

This Petition for Review from the December 6, 2012 Finding and Dismissal of the Commissioner acting for the Fourth District was heard June 28, 2013 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Charles F. Senich and Peter C. Mlynarczyk.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant appeals from the December 6, 2012 Finding and Dismissal issued by the Commissioner acting for the Fourth District. In that finding and dismissal the trial Commissioner was asked to determine whether the claimant was entitled to a penalty for late payment of award pursuant to § 31-303 C.G.S. The pertinent facts are as follows.

The claimant was employed by the respondent Town of Stratford Fire Department as a firefighter. On May 18, 2007, the claimant filed a Form 30C, notice of claim, seeking benefits pursuant to § 7-433c alleging a claim on the basis of “heart condition/cardiac myopathy incurred during employment firefighting.” The Form 30C listed May 19, 2006 as the date of injury. See Findings, ¶ 2. On January 31, 2012 Commissioner Goldberg approved an “Agreement By Stipulation To Date.” [Hereafter “Stip Agreement”] The Stip Agreement was signed by both the claimant’s and respondent’s counsel as well as the Mayor of the Town of Stratford.

A part of the Stip Agreement included an agreement by the respondent to pay the claimant one hundred and thirty (130) weeks of permanent partial disability at the rate of \$786.00 per week from July 7, 2009, the agreed-upon maximum medical improvement date. See Findings, ¶ 5. Thereafter the respondent issued a check in the amount of \$102,180 less applicable deductions for a net total of \$57,969.24. This sum reflected the full permanent partial disability payments due pursuant to the Stip Agreement.

Paragraph 14 of the Stip Agreement included a provision stating the following: “[i]t is further stipulated and agreed by the parties that the payment of aforesaid sums shall be considered compensation for the purposes of calculating the Claimant’s pension

upon his retirement from the Town of Stratford and included in calculating said pension.” See Findings, ¶ 6. The claimant retired from the Town of Stratford Fire Department effective February 27, 2012. When the claimant’s retirement benefit calculations were provided to him he discovered that the respondent did not include the sums paid for the permanent partial disability benefits pursuant to the Stip Agreement.

The respondent contends that it did not comply with paragraph 14 of the Stip Agreement and its provision as to the calculation of claimant’s retirement benefits because to do so would contravene the terms of a collective bargaining award issued by the State Board of Mediation and Arbitration in 2007. As the State Board of Mediation and Arbitration in 2007 Award comprises the Firefighter Pension Agreement the respondent did not include those sums in the calculation of claimant’s retirement benefits. The claimant then asserted a claim for a late payment award pursuant to § 31-303 on the basis of the respondent’s failure to calculate the claimant’s retirement benefits consistent with paragraph 14 of the Stip Agreement.

The claim for a late payment penalty award pursuant to § 31-303 was the subject of a formal hearing before the trial Commissioner. In her December 6, 2012 Finding and Dismissal, the trier concluded, inter alia:

The fact that this claim regarding the respondent’s violation of paragraph 14 of the Stip to Date arose from the claim for heart and hypertension benefits that was properly before this Commission does not confer jurisdiction upon the Workers’ Compensation Commission over the calculation of the claimant’s pension benefits. Accordingly, the Workers’ Compensation Commission lacks jurisdiction to award a penalty for the respondent’s admitted non-compliance with said paragraph 14, and said claim must be dismissed.

Conclusion, ¶ E.

The trial commissioner also noted, “While the respondent's actions in this claim . . . demonstrate an alarming lack of candor that is most likely actionable in another forum, the Workers’ Compensation Commission unfortunately lacks the jurisdiction necessary in order to hold the respondents accountable for their troubling actions.” See Conclusion, ¶ D.

We think the law in this matter is clear and what occurred here provides a cautionary tale. As to the law, the Workers’ Compensation Commission is a tribunal of limited jurisdiction. Gagnon v. United Aircraft Corporation, 159 Conn. 302 (1970). See also, Stickney v. Sunlight Construction Inc., 248 Conn. 754 (1999); Castro v. Viera, 207 Conn. 420 (1988). However, there are instances where the authority and obligations of the Act require determinations that, at first blush, seem to be beyond the Commission’s jurisdiction. See e.g., Omachel v. Sunshine Masonry Construction, 5148 CRB-1-06-10 (October 22, 2007), *appeal dismissed*, A.C. 29366 (February 27, 2008), *cert. denied*, 286 Conn. 923 (2008). (Commissioner erred in concluding he lacked subject matter jurisdiction as to whether employer was insured at the time of the injury.) However, there are instances where determinations that seem to be outside the scope of the Workers' Compensation Act’s subject matter jurisdiction are permitted. Such determinations are generally limited to instances where such interpretations are “incidentally necessary to the resolution of a case arising under that act.” Stickney, *supra*, fn. 5.¹

¹ Stickney v. Sunlight Construction Inc., 248 Conn. 754, 764 (1999) fn. 5 provides in pertinent part:

“[T]he subject matter jurisdiction of the commission in previous cases has encompassed the interpretation of statutory provisions codified outside the [act] when such interpretations have been incidentally necessary to the resolution of a case arising under that act. See Wonacott v. Bartlett Nuclear, Inc., 15 Conn. Workers' Comp. Rev. Op. 334 (1996) (board interpreted Internal Revenue Code in determining wages under General Statutes § 31-310); Pascarelli v. Moliterno

We do not discern any legal basis for concluding that the trial commissioner had the requisite subject matter jurisdiction to (1) determine the claimant's retirement pension rate pursuant to a collective bargaining agreement, or (2) order the payment of claimant's retirement pension at a rate other than that provided by the collective bargaining agreement. Thus, if subject matter jurisdiction over the *res* is lacking, it follows that the trial commissioner is without authority to assess a late payment penalty pursuant to § 31-303.

In Muldoon v. Homestead Insulation Co., 231 Conn. 469, 479-80 (1994) our Supreme Court reviewed the types of compromise agreements encountered in Workers' Compensation,² and took cognizance of the "stipulation to date." The Muldoon court also noted that no compromise agreement was binding until approved by a commissioner. In the issue at bar, the Stip Agreement was approved by a Commissioner. However, as this tribunal noted in Hammick v. Hartford, 4608 CRB-1-03-1 (December 29, 2003), the Workers' Compensation Commission lacks jurisdiction over matters that are not part of the Workers' Compensation Act's framework and confers rights that exist independently

Stone Sales, 14 Conn. Workers' Comp. Rev. Op. 328 (1995) (board interpreted Bankruptcy Code in determining whether relief from stay required to allow proceedings against insurer); Versage v. Kurt Volk, Inc., 11 Conn. Workers' Comp. Rev. Op. 253 (1993) (board interpreted provision of guaranty act in reviewing award of interest on disability payments pursuant to General Statutes § 31-300)." (Internal quotation marks omitted.)

² Muldoon v. Homestead Insulation Co., 231 Conn. 469, 480 (1994) stated:

[T]he act does not explicitly provide for this type of settlement, we have consistently upheld the ability to compromise a compensation claim as inherent in the power to make a voluntary agreement regarding compensation. *Sugrue v. Champion*, 128 Conn. 574, 578-79, 24 A.2d 890 (1942). There are three types of stipulations: (1) a full and final stipulation that closes *all* aspects of the claim whether they are for past, present or future wages and medical expenses, known and unknown; (2) a stipulation to date that is used to close out only a portion of a claim with the remainder left open or that is used to close out an entire claim but only up to a certain date; and (3) an open medical stipulation that closes all aspects of the claim except for medical expenses that are related to the accident or the disease. A. Sevarino, *Connecticut Workers' Compensation After Reforms* (1994) p. 233. As in the case of a voluntary agreement, no stipulation is binding until it has been approved by the commissioner. J. Asselin, *supra*, p. 208.

from the Act. Benefits due pursuant to a collective bargaining agreement and which do not impact the calculation of the workers' compensation benefits due the claimant are outside the jurisdiction of the Workers' Compensation Commission.

Further, subject matter jurisdiction under the Workers' Compensation Act cannot be waived, or conferred by either agreement or conduct. See Castro, supra. Including provisions in a Stipulation Agreement relating to matters outside the jurisdiction of the Workers' Compensation Commission are matters that the parties engage in at their own peril. As has long been noted a Stipulation is contractual in nature. See Wallace v. Lux Clock Co., 120 Conn. 280 (1935). It may be that the parties include such provisions in a compromise agreement so as to indicate that the parties have engaged in meaningful good faith negotiations and satisfied the elements of a contractual agreement. However, where the terms of a Stipulation include a provision that is beyond the jurisdiction of the Workers' Compensation Commission the provision is ultra vires. Pepe v. New Britain, 203 Conn. 281, 294 (1987) (a municipality cannot do indirectly what it lacks the power to do directly). Therefore it stands to reason that enforcement of the ultra vires provision does not exist in this forum. That is not to say that a party seeking enforcement of a portion of a stipulation that is arguably ultra vires pursuant to the Workers' Compensation Act is without a remedy, merely that the remedy may lie in another forum.

We therefore affirm the December 6, 2012 Finding and Dismissal of the Commissioner acting for the Fourth District.

Commissioners Charles F. Senich and Peter C. Mlynarczyk concur.