CASE NO. 6149 CRB-3-16-10 : COMPENSATION REVIEW BOARD
CLAIM NOS. 300107933, 300107994,
300041917, 300063901, 300064524,
300070632, 300077653, 300084093 &
300086848

PAUL DOMBROWSKI
CLAIMANT-APPELLANT : WORKERS' COMPENSATION COMMISSION

v.

: SEPTEMBER 11, 2017

CITY OF NEW HAVEN/
POLICE DEPARTMENT
EMPLOYER
SELF-INSURED

and

CIRMA
ADMINISTRATOR
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by Steven D. Jacobs, Esq., Jacobs & Jacobs, L.L.C., 700 State Street, Third Floor, New Haven, CT 06511.

The respondents were represented by Brian L. Smith, Esq., Pomeranz, Drayton & Stabnick, L.L.C., 95 Glastonbury Boulevard, Glastonbury, CT 06033-4412.

This Petition for Review from the October 11, 2016 Finding & Dismissal of Nancy E. Salerno, the Commissioner acting for the Third District, was heard March 24, 2017 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Christine L. Engel and Daniel E. Dilzer.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant in this matter seeks to open a stipulation that was approved by the Commission pursuant to a hearing held in accordance with General Statutes § 31-297[1] on September 30, 2015. After hearing the claimant's arguments, the trial commissioner, Nancy E. Salerno, denied the claimant's bid to open the stipulation and issued a Finding & Dismissal dated October 11, 2016. The trial commissioner found the claimant did not present any of the recognized criteria that would justify voiding an agreement approved by the Commission. The claimant has appealed, arguing that because he also executed a release of his claims outside

[1] General Statutes § 31-297 states: "If an employer and his injured employee, or his legal representative, as the case may be, fail to reach an agreement in regard to compensation under the provisions of this chapter, either party may notify the commissioner of the failure. Upon such notice, or upon the knowledge that an agreement has not been reached in a case in which a right to compensation may exist, the commissioner shall schedule an early hearing upon the matter, giving both parties notice of time and place not less than ten days prior to the scheduled date; provided the commissioner may, on finding an emergency to exist, give such notice as he finds reasonable under the circumstances. If no agreement has been reached within sixty days after the date notice of claim for compensation was received by the commissioner, as provided in section 31-294c, a formal hearing shall be scheduled on the claim and held within thirty days after the end of the sixty-day period, except that if an earlier hearing date has previously been scheduled, the earlier date shall prevail. Hearings shall be held, if practicable, in the town in which the injured employee resides; or, if it is not practicable to hold a hearing in the town, in any other convenient place that the commissioner may prescribe. Sufficient notice of the hearing may be given to the parties in interest by a brief written statement in ordinary terms of the date, place and nature of the injury upon which the claim for compensation is based."

We note, however, it is possible that the citation of General Statutes § 31-297 in the Finding & Dismissal was a scrivener's error and the trial commissioner intended to cite General Statutes § 31-296 (a). We have reviewed that statute as well. General Statutes § 31-296 (a) states: "If an employer and an injured employee, or in case of fatal injury the employee's legal representative or dependent, at a date not earlier than the expiration of the waiting period, reach an agreement in regard to compensation, such agreement shall be submitted in writing to the commissioner by the employer with a statement of the time, place and nature of the injury upon which it is based; and, if such commissioner finds such agreement to conform to the provisions of this chapter in every regard, the commissioner shall so approve it. A copy of the agreement, with a statement of the commissioner's approval, shall be delivered to each of the parties and thereafter it shall be as binding upon both parties as an award by the commissioner. The commissioner's statement of approval shall also inform the employee or the employee's dependent, as the case may be, of any rights the individual may have to an annual cost-of-living adjustment or to participate in a rehabilitation program administered by the Department of Rehabilitation Services under the provisions of this chapter. The commissioner shall retain the original agreement, with the commissioner's approval thereof, in the commissioner's office and, if an application is made to the superior court for an execution, the commissioner shall, upon the request of said court, file in the court a certified copy of the agreement and statement of approval."

Chapter 568 at the time he settled his compensation claim, Leonetti v. MacDermid, Inc., 5623 CRB-5-11-1 (March 19, 2012), *aff'd,* 310 Conn. 195 (2013) compels this tribunal to void the approved stipulation. Upon review, we do not find Leonetti sufficiently congruent either factually or legally to warrant reversing the trial commissioner's decision. Rather, we find Nielsen v. MNS Therrien Construction Company, 6040 CRB-1-15-10 (July 21, 2016) and Rodriguez v. State, 76 Conn. App. 614 (2003) applicable to this matter. The claimant has the burden of persuading the trial commissioner that his or her prior decision to enter into a stipulation resolving a claim under Chapter 568 was void due to fraud or mistake. The claimant in the present matter did not persuade the trial commissioner of that argument. In addition, the stipulation herein, unlike the stipulation rejected in Leonetti, supra, provided consideration for the release of the claimant's claim for Chapter 568 benefits. As such, it was not invalid as a matter of law. We affirm the Finding & Dismissal.

The trial commissioner reached the following findings which are relevant to our inquiry on appeal. She noted that the claimant, who was not represented by counsel in September 2015, had reached an agreement with his employer, the city of New Haven ("city") to resolve his open compensation claims for the sum of $22,500. The parties agreed that documents memorializing this agreement would be executed and approved by the Commission on September 30, 2015. On that day, the claimant said that along with a stipulation releasing his Chapter 568 claims, the city presented him with a "Settlement Agreement, General Release and Covenant Not to Sue" ("settlement agreement") as a separate document, which required the claimant to relinquish whatever claims he had against the city for matters outside the scope of Chapter 568. No additional consideration

was stated in the settlement agreement beyond the sum the city had agreed to pay the claimant under the stipulation to settle his compensation claims. The claimant said that prior to the September 30, 2015 hearing, he had not seen any of the documents drafted by the city.

The claimant's union representative attended the September 30, 2015 hearing. Commissioner Jack R. Goldberg canvassed the claimant and his representative, reviewed the terms of the documents relating to Chapter 568, and determined that the claimant had voluntarily agreed to the terms of the stipulation. The claimant received his settlement check from the city a few days later and decided to return the check. He now argues that his agreement to sign the settlement agreement was neither knowing nor voluntary as he did not have time to review its provisions, and therefore his consent was not valid. The claimant contends that since the two documents were linked, this voided his approval of the stipulation to settle his Chapter 568 claims. The claimant asserts that the terms of General Statutes § 31-315 authorized the commissioner to open the stipulation.[2]

The city's position is that the arguments presented by the claimant fail to satisfy the conditions of General Statutes § 31-315, which enable a commissioner to open a stipulation which has been approved by the Commission. The city denies that there has been fraud or mutual mistake regarding the terms agreed to by the parties. The city also

[2] General Statutes 31-315 states: "Any award of, or voluntary agreement concerning, compensation made under the provisions of this chapter or any transfer of liability for a claim to the Second Injury Fund under the provisions of section 31-349 shall be subject to modification in accordance with the procedure for original determinations, upon the request of either party or, in the case of a transfer under section 31-349, upon request of the custodian of the Second Injury Fund, whenever it appears to the compensation commissioner, after notice and hearing thereon, that the incapacity of an injured employee has increased, decreased or ceased, or that the measure of dependence on account of which the compensation is paid has changed, or that changed conditions of fact have arisen which necessitate a change of such agreement, award or transfer in order properly to carry out the spirit of this chapter. The commissioner shall also have the same power to open and modify an award as any court of the state has to open and modify a judgment of such court. The compensation commissioner shall retain jurisdiction over claims for compensation, awards and voluntary agreements, for any proper action thereon, during the whole compensation period applicable to the injury in question."

asserts that the claimant's decision to repudiate the settlement agreement was ineffective because it was untimely.

After considering the arguments presented by both counsel and reviewing the record, the trial commissioner concluded the claimant was retired at the time of the 2015 hearing and had an outstanding claim for injuries sustained in the course of his employment. He sought to settle those claims with the city. Informal hearings before the Commission resulted in a proposed settlement amount of $22,500 to effect a "global settlement." At the point when the city was seeking internal approval to proceed, the claimant contacted Joseph Salcito, who worked as the city's risk management administrator, to suggest he would accept a smaller settlement amount if the matter could be expedited.

On September 23, 2015, the city approved the $22,500 settlement amount, and on September 30, 2015, a hearing was held before Commissioner Goldberg to review the stipulation. The commissioner reviewed this document as well as the "Stipulation and What it Means" and "Stipulation Questionnaire" with the claimant. After canvassing the claimant in the presence of his union representative, the commissioner determined that the claimant knowing and voluntarily agreed to the stipulation. Commissioner Goldberg did not review the settlement agreement; nor was he asked to do so. The stipulation reviewed by the commissioner did not reference the settlement agreement. The claimant executed the settlement agreement on September 30, 2015 in the presence of his union representative and his signature was witnessed by Attorney Meghan Woods.

The trial commissioner found that the claimant was issued a check for $22,500 which was mailed to him on October 1, 2015. The claimant returned this check to his

union office on October 7, 2015, signifying he rejected the settlement agreement. The check was subsequently returned to Mr. Salcito. Subsequently, the claimant initiated proceedings before the Commission to set aside approval of the stipulation. The trial commissioner determined, based on these facts, that the claimant had not presented evidence of fraud, misrepresentation, accident or mistake in the stipulation document, nor had he challenged the adequacy of Commissioner Goldberg's canvas. Commissioner Salerno determined that Commissioner Goldberg's approval of the stipulation was independent of any consideration of the settlement agreement, and that issues related to the settlement agreement were beyond the purview of the Commission due to the precedent established by Stickney v. Sunlight Construction, Inc., 248 Conn. 754 (1999).

There was no Motion to Correct filed in this matter, and the claimant appealed to this tribunal based on an allegation of legal error in the Finding & Dismissal. The gravamen of his appeal is that the commissioner's decision was contrary to law because it conflicts with Leonetti, supra. In that case, the trial commissioner refused to approve a stipulation presented by the respondent that divested the claimant of his claim under Chapter 568. The commissioner concluded that the terms of the agreement provided the claimant with no consideration in exchange for withdrawing his claim for compensation benefits, and the agreement had not been presented to this Commission for approval before it had been executed. Both this tribunal and the Supreme Court affirmed that decision. As the claimant views this situation, the same principle that caused the trial commissioner to reject the purported settlement in Leonetti should have caused the commissioner to open the stipulation in this case. We are not so persuaded.

On appeal, we generally extend deference to the decisions made by the trial commissioner. "As with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did." Daniels v. Alander, 268 Conn. 320, 330 (2004), *quoting* Burton v. Mottolese, 267 Conn. 1, 54 (2003). The Compensation Review Board cannot retry the facts of the case and may only overturn the findings of the trial commissioner if they are without evidentiary support, contrary to the law, or based on unreasonable or impermissible factual inferences. Kish v. Nursing and Home Care, Inc., 248 Conn. 379, 384 (1999) and Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). Nonetheless, while we must provide deference to the decision of a trial commissioner, we may reverse such a decision if the commissioner did not properly apply the law or reached a decision unsupported by the evidence on the record. Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

The claimant's argument on appeal is that because the trial commissioner in Leonetti reviewed a separation agreement to ascertain if it provided consideration in exchange for the claimant withdrawing his claims under Chapter 568, Commissioner Goldberg erred in not ascertaining if the settlement agreement in this case offered the claimant any consideration for withdrawing claims outside the scope of Chapter 568. We have reviewed the Supreme Court's decision in Leonetti and do not find that it provides authority for this position.

In Leonetti, the trial commissioner concluded that the agreement presented to the claimant offered financial consideration solely for his years of service and, consequently, provided no consideration to the claimant in exchange for withdrawing his workers'

compensation claim. As a result, the commissioner found the agreement failed to release the respondent from its obligations under Chapter 568 and scheduled additional hearings. The respondent appealed to this tribunal and we concluded, as a matter of law, that no consideration was paid by the respondent to the claimant in exchange for releasing his claim. The Supreme Court further noted that this tribunal "refused to rule on the enforceability of the agreement as a whole, finding that its jurisdiction extended only to the purported release of the claimant's workers' compensation claim." Id., 204.

In considering the merits of the respondent's argument in Leonetti, the Supreme Court noted that since the claimant had challenged the validity of the agreement, "the burden rested with the respondent to demonstrate that adequate consideration was paid for the workers' compensation claim." Id., 214. In the present case, it is apparent the respondents had lengthy discussions with the claimant relative to what the appropriate compensation for releasing his claims should be. These discussions included informal hearings before trial commissioners. The claimant was canvassed by Commissioner Goldberg regarding whether he understood the terms of the stipulation and whether he was executing the agreement voluntarily.[3] The respondents promptly proffered the financial consideration called for in the stipulation. Therefore, unlike Leonetti, the claimant agreed to consideration for releasing his claim under Chapter 568 and received that consideration.

[3] An effective canvas of the claimant is an essential prerequisite to approving a stipulation before this Commission. See Welch v. Arthur A. Fogarty, Inc., 157 Conn. 538 (1969). "Approval of such a stipulation by the commissioner is not an automatic process. It is his function and duty to examine all the facts with care before entering an award, and this is particularly true when the stipulation presented provides for a complete release of all claims under the act." Id., 545. Therefore, the trial commissioner must perform his or her own inquiry into the terms of a proposed stipulation, and not merely accept at face value a party's representation that the agreement in question represents a meeting of the minds between the contracting parties. It is apparent from the Finding & Dismissal that Commissioner Salerno determined that Commissioner Goldberg had done this prior to approving the stipulation.

In the present matter, the claimant argues that he did not receive consideration for executing the settlement agreement. However, this document purported to release the claimant's rights for matters outside the scope of Chapter 568. It has long been black-letter law that "[p]ayment of compensation under the act is consequently upon an entirely different basis from payments made in satisfaction of common law rights." Sugrue v. Champion, 128 Conn. 574, 579 (1942). We believe the trial commissioner could reasonably determine that if the claimant had been adequately compensated for executing the stipulation, consideration of other issues between the claimant and the respondent as recited in the settlement agreement was not incidentally necessary to the resolution of the claim.[4]

This board recently considered similar issues in Nielsen, supra. In that case, the claimant executed a Full and Final Stipulation of his claim and the settlement included payment of the settlement proceeds into an annuity policy which provided periodic payments of cash to the claimant. At a later date, the claimant sought via General Statutes § 31-315 to open the stipulation, as he wanted a lump-sum payment to buy a condominium. The trial commissioner in Nielsen denied the request, in part because she concluded that she had no jurisdiction over the annuity company. On appeal, we concluded that in light of the fact that the annuity firm was neither an employer nor an

[4] We have extended great latitude to a trial commissioner to ascertain what constitutes adequate consideration in a stipulation or agreement reached under General Statutes § 31-296, and have been unwilling to second-guess a claimant's prior decisions at a later date when he or she seeks a better bargain. An example which is instructive regarding this concept is Ouelette v. New England Masonry Company, 5424 CRB-7-09-2 (January 14, 2010). In Ouelette, a claimant executed a stipulation-to-date in 2002 that did not compensate him fully for a twenty percent (20%) permanency rating as of that date. When a subsequent injury raised the claimant's disability to thirty-two and one-half percent (32.5%), we held that the claimant had already received "paid or payable" compensation for the initial injury and the carrier on the subsequent risk was entitled to a credit against the full level of the earlier permanency rating.

insurer within the terms of Chapter 568, Stickney deprived the commission of jurisdiction.

Moreover, in Nielsen, we concluded that even had the trial commissioner retained jurisdiction, the claimant failed to establish a condition precedent pursuant to General Statutes § 31-315 to open a stipulation.

> Even had the trial commissioner erred in finding that she lacked jurisdiction to consider this matter, we would still affirm the Finding and Dismissal. We have reviewed precedent applying § 31-315 C.G.S. and believe that it is a factual determination within the commissioner's discretion as to whether a stipulation should be opened. We look to Rodriguez v. State, 76 Conn. App. 614 (2003) as setting the precedent for consideration of such claims. In Rodriguez the claimant sought to open a stipulation, arguing his attorney had not procured an appropriate result as a result of improperly including a prior claim in the settlement. The trial commissioner and this tribunal agreed with this reasoning. The Appellate Court, however, noted that the claimant had executed the stipulation documents and had been canvassed by the trial commissioner prior to having the settlement approved. While the claimant argued that "mutual mistake" voided the agreement, id., 624, the Appellate Court pointed out this concept involved "a result that neither intended." Id., 625. The Appellate Court concluded the record did not demonstrate any common or mutual mistake regarding the stipulation. Id., 626. Since a unilateral mistake did not provide grounds to open a stipulated agreement the Appellate Court ordered the trial commissioner's decision to open the stipulation reversed.

Id.

As our Appellate Court pointed out in Rodriguez, supra, our Supreme Court has stated that "[a]lthough the commission may modify awards under certain circumstances, its power to do so is strictly limited by statute." Id., 622, *quoting* Marone v. Waterbury, 244 Conn. 1, 15 (1998). In Rodriguez, the commissioner canvassed the claimant to ensure he understood the stipulation. The terms of the stipulation in that case included a reference that it was to "be *in full and final settlement of all claims which the aforesaid*

[*plaintiff*] *might otherwise have against the* [*defendant*] and is made and accepted in lieu of all other compensation payments…." Id., 625. (Emphasis in the original.) The Appellate Court found that even if the claimant in Rodriguez was mistaken in believing the agreement did not release the state from a prior pending compensation claim, there was no evidence that a mutual mistake existed and, therefore, no statutory grounds to open the stipulation. The Appellate Court reiterated this position in Krol v. A.V. Tuchy, Inc., 135 Conn. App. 854 (2012).

> "The kind of mistake that would justify the opening of a stipulated judgment [or award] … must be mutual; a unilateral mistake will not be sufficient to open the judgment [or award]…. This court has defined a mutual mistake as one that is common to both parties and effects a result that neither intended…. Whether there has been such mistake is a question of fact." (Citations omitted; internal quotation marks omitted.)

Id., 860, *quoting* Rodriguez v. State, 76 Conn. App. 614, 625 (2003).

In the present case, it is apparent that both parties wanted to resolve the claimant's pending claims under Chapter 568. A sum of $22,500 was agreed to as reasonable consideration for the withdrawal of these claims, and the claimant was canvassed by the trial commissioner prior to executing the stipulation. Given that the claimant received the consideration specified in the stipulation, no mistake was made which would warrant opening the stipulation under General Statutes § 31-315. To the extent there was a failure to achieve a meeting of the minds relative to the issues in the settlement agreement which were beyond the jurisdiction of this Commission, the claimant would need, consistent with the court's analysis in Stickney, supra, to seek redress in a forum which has jurisdiction to consider such a dispute.[5]

[5] See Lee v. Empire Construction Special Projects, LLC, 5751 CRB-2-12-5 (August 8, 2013) and Verrinder v. Matthew's Tru Colors Painting & Restoration, 4936 CRB-4-05-4 (December 6, 2006), *appeal dismissed*,

Nonetheless, this board has some concerns relative to the practice of pursuing "global settlements" between claimants and respondents at stipulation hearings before trial commissioners. A proper regard for equitable conduct would suggest that all proposed settlement documents be circulated in advance of such hearings so that the claimant may have a reasonable opportunity to fully apprise himself of the terms and conditions of all agreements sought by the respondents. The Commission cannot address disputes outside its statutory ambit, but we can seek to minimize the likelihood of such disputes by directing parties to avoid "settling on the courthouse steps" and to provide all anticipated documentation to claimants well in advance of stipulation-approval hearings.

The trial commissioner appropriately determined that the claimant knowingly signed a stipulation which provided consideration for his Chapter 568 claims and no statutory grounds exist to open the stipulation.

We affirm the Finding & Dismissal.

Commissioners Christine L. Engel and Daniel E. Dilzer concur in this opinion.

A.C. 28367 (July 25, 2007), wherein this tribunal noted that disputes with insurers beyond the scope of our statutes would need to be addressed in another forum.

CERTIFICATION

THIS IS TO CERTIFY THAT a copy of the foregoing was mailed this 11th day of September 2017 to the following parties:

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