CASE NO. 6448 CRB-7-21-11 CLAIM NO. 601076085	:	COMPENSATION REVIEW BOARD
KEVIN MIKULSKI CLAIMANT-APPELLANT	:	WORKERS' COMPENSATION COMMISSION
v.	:	JANUARY 11, 2023
A. DUIE PYLE, INC. EMPLOYER		
and		
NEW HAMPSHIRE INSURANCE COMPANY d/b/a AIG CLAIMS, INCORPORATED INSURER RESPONDENTS-APPELLEES		

APPEARANCES:

The claimant appeared at oral argument before the board as a self-represented party.

The respondents were represented by Claudia D. Heyman, Esq., Halloran Sage, 265 Church Street, Suite 802, New Haven, CT 06510.

This Petition for Review from the October 18, 2021 Findings and Orders of Randy L. Cohen, Administrative Law Judge acting for the Seventh District[1], was heard October 28, 2022 before a Compensation Review Board panel consisting of Administrative Law Judges Daniel E. Dilzer, Toni M. Fatone and Soline M. Oslena.[2]

[1] Although the caption of the October 18, 2021 Findings and Orders lists the Sixth District, we note that the formal hearing was heard in the Seventh District.

[2] We note that a motion for extension of time and a motion for continuance were granted during the pendency of this appeal.

OPINION

DANIEL E. DILZER, ADMINISTRATIVE LAW JUDGE. The claimant has appealed from the October 18, 2021 Findings and Orders of Randy L. Cohen, Administrative Law Judge acting for the Seventh District, denying the claimant's bid to open a Full and Final Stipulation (stipulation) approved by the commission on February 20, 2020. The claimant has argued that he presented a compelling argument to Administrative Law Judge Cohen that the stipulation had been approved due to some form of fraud, mistake or duress and that we should reverse her decision on appeal. After review, we conclude that Administrative Law Judge Cohen could have reasonably concluded from the record that the claimant's motion did not satisfy the standards delineated in Dombrowski v. New Haven, 6149 CRB-3-16-10 (September 11, 2017), *aff'd*, 194 Conn. App. 739 (2019), *cert. denied*, 335 Conn. 908 (2020) and Franklin v. Pratt & Whitney, 6330 CRB-5-19-5 (March 18, 2020).[3] As a result, we affirm the Finding.

The following factual findings from Administrative Law Judge Cohen's decision are pertinent to our consideration of this appeal. The claimant sustained compensable injuries while employed by the respondent and the parties reached a stipulation to resolve the indemnity portion of the claim. A settlement for $781,000 was approved by the commission on December 14, 2017, and the claimant has been paid in accordance with the stipulation via an initial lump sum payment and ongoing annuity payments. See Findings, ¶¶ 2-3. After receipt of the settlement, the claimant sought to open the

[3] The claimant filed a motion to submit additional evidence during the pendency of this appeal. This tribunal denied that motion in the Ruling Re: Motion for Additional Evidence issued August 8, 2022.

stipulation and further negotiations occurred between the claimant and respondent which included the medical treatment aspect of the claim. A settlement to resolve all the outstanding issues was reached on the following terms:

a. Payment by the respondents to the claimant in the amount of $39,500.00 to resolve the claimant's request to open the December 14, 2017 stipulation agreement or any future attempts to open any settlement agreements;

b. Payment by the respondents to the claimant in the amount of $500.00 to serve as consideration for the claimant executing a general release of any and all claims, including those outside the jurisdiction of the Workers' Compensation Commission of Connecticut; and,

c. The funding of a Medicare Set Aside Account ("MSA") by the respondents that would be professionally administered by Ametros.

Findings, ¶¶ 7 a.-c.

Administrative Law Judge Cohen found the Centers for Medicare & Medicaid Services (CMS) issued a letter on January 24, 2020 approving the proposed Medicare Set Aside Account (MSA) submitted by the respondents, determining that the respondents' proposal of $779,296 adequately considered Medicare's interest. The CMS letter further confirmed the account should be funded with an initial deposit of $129,426 with subsequent annual payments of $24,069 for a period of twenty-seven years. This second settlement agreement was approved by Administrative Law Judge Brenda Jannotta following a hearing which was held on February 20, 2020.

The claimant subsequently moved to open the settlement agreement. He alleged that various medical providers would not accept payment from the MSA's administrator, Ametros, and he proposed that he self-administer the MSA. The respondents have argued that any medical treatment the claimant is seeking relating to his compensable

injury must be processed through the MSA and, therefore, Ametros, per the terms of the settlement approved on February 20, 2020. At the hearing seeking to open the 2020 settlement, the claimant testified that he made several attempts to contact doctors for medical treatment, but they would not accept payment for treatment from Ametros through its Careguard program. See Findings, ¶ 14. The respondents, however, confirmed that the medical providers that the claimant alleged refused to accept payment from Ametros, did, in fact, accept payment for services from Ametros. Subsequently, the claimant testified that the doctors he had contacted, who would not accept payment from Ametros, were not his physicians. Administrative Law Judge Cohen found that the MSA account had been funded in accordance with the settlement agreement and had been professionally managed. She further found the claimant acknowledged the account had been funded in accordance with the agreement.

Administrative Law Judge Cohen then reviewed the transcript of the February 20, 2020 hearing. She found it had been held on the record before Administrative Law Judge Jannotta, who specifically asked the claimant whether he understood the terms of the settlement agreement and further asked the claimant several times whether he had questions about the full and final settlement agreement. Administrative Law Judge Jannotta offered to use the hearing as an opportunity for the claimant to review the document with her to ensure that he understood the meaning of each paragraph. The claimant declined that offer. He informed the administrative law judge that he had reviewed the document and that he wanted her to approve same.

Based on this record, Administrative Law Judge Cohen concluded that her decision was bound by the precedent in Franklin, supra, and any judgment could only be

opened due to fraud, accident or mistake. She did not find the claimant credible and determined he did not provide evidence supporting a claim that the stipulation herein was entered into due to a mistake of fact or fraud. She further found that any problems that the claimant experienced in trying to obtain medical treatment were not the result of the stipulation, and that the respondents had performed their obligations under that agreement. Consequently, she dismissed the claimant's motion to open.

The claimant filed a timely appeal and a motion to submit additional evidence which we have addressed in our August 8, 2022 Ruling Re: Motion for Additional Evidence. He argued that the terms of the stipulation were inconsistent with his understanding of the agreement and that he should have the ability to self-administer the MSA. He also argued that the written agreement was not presented to him until the eve of the formal hearing at which it was to be approved and that this would warrant opening the stipulation. Finally, he argued that there was some form of misconduct on the part of the respondents in funding and establishing the MSA account in advance of it being officially approved by the commission. The respondents argued that these were all questions of fact which were considered by Administrative Law Judge Cohen and decided in a manner adverse to the claimant. The respondents further contended that Administrative Law Judge Jannotta properly canvassed the claimant, he agreed to the stipulation, and any effort to open the agreement would be inconsistent with our precedent in Franklin, supra. After consideration of these arguments, we find the respondents' position persuasive.

On appeal, we generally extend deference to the decisions made by the administrative law judge. "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 administrative law judge if they are without evidentiary support, contrary to the law, or based on unreasonable or impermissible factual inferences. See Kish v. Nursing & 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 an administrative law judge, we may reverse such a decision if the judge did not properly apply the law or reached a decision unsupported by the evidence on the record. See Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

To comport with the standards established to open a stipulation pursuant to Franklin, supra, the claimant would need to present a persuasive argument that some form of fraud, accident or mutual mistake was present that vitiated the approval of the agreement. A threshold requirement to establishing the parties were proceeding under a mutual mistake would be to establish that both parties were mistaken as to the terms of the agreement at the time they agreed to the stipulation. We have reviewed the transcript of the February 20, 2020 hearing and concur with Administrative Law Judge Cohen that the claimant was properly canvassed by Administrative Law Judge Jannotta and expressed no concerns as to the terms of the agreement. The following exchange occurred at the stipulation approval hearing.

> COMMISSIONER JANNOTTA: All right. So do you understand everything so far?

MR. MIKULSKI: Yes.

COMMISSIONER JANNOTTA: Do you have any questions about anything that's been --

MR. MIKULSKI: I'm, I fully understand what's about to happen.

COMMISSIONER JANNOTTA: Okay.

February 20, 2020 Transcript, p. 4.

Later, counsel for the respondents described the terms of the MSA agreement and the respondents' funding proposal for the commission and for the claimant. Administrative Law Judge Jannotta inquired if the claimant had read the agreement.

COMMISSIONER JANNOTTA: Okay. Have you reviewed that document?

MR. MIKULSKI: Absolutely.

COMMISSIONER JANNOTTA: Okay. So that's the document that's in front of you. Do you have any questions about anything that's in the document?

MR. MIKULSKI: Not at all.

Id., pp. 5-6.

Counsel for the respondents then discussed the letter from CMS and discussed the manner in which the MSA account would be managed. See id., pp. 6-7. After this discussion, Administrative Law Judge Jannotta asked the claimant if he understood and he responded "yes." Id., p. 7. Administrative Law Judge Jannotta then made an additional effort to ascertain if the claimant had questions or concerns as to what he was executing.

COMMISSIONER JANNOTTA: Look at each section. Do you want -- you want to make sure you verify that you're okay with everything that's in there. You don't -- now is really the time to ask any questions, so I want to make sure you're comfortable with every single thing that's in there, because after I sign the

> documents today we'll close out your workers' compensation case, so you can't come back and request any future benefits.
>
> MR. MIKULSKI: I'm not coming back, all right.
>
> COMMISSIONER JANNOTTA: I just want to make sure you understand.
>
> MR. MIKULSKI: Right.

Id., p. 8.

After a discussion as to the impact of social security, Administrative Law Judge Jannotta made one final effort to confirm the claimant understood this agreement.

> COMMISSIONER JANNOTTA: Okay. All right. Are there any other questions about anything that's in the agreement here today?
>
> MR. MIKULSKI: Absolutely not. No.

Id., p. 12.

Subsequent to the approval of the stipulation, the claimant says he learned that the MSA account would be managed by a third-party, and it had been his understanding that he would self-administer this account. We have reviewed the documents presented at the February 20, 2020 hearing and it is apparent to us that they clearly explained to the claimant that the MSA account was to be administered by a third-party. Whatever alleged mistake that may have existed as to the manner in which the MSA was to be administrated was purely unilateral in nature on the part of the claimant. The precedent in Krol v. A.V. Tuchy, Inc., 5562 CRB-4-10-6 (June 1, 2011), *aff'd*, 135 Conn. App. 854, 859-63 (2012), *cert. denied*, 305 Conn. 923 (2012), and Rodriguez v. State/Dept. of Correction, 4317 CRB-1-00-11 (October 23, 2001), *rev'd*, 76 Conn. App. 614, 624-26 (2003), stands for the proposition that only a mutual mistake can justify opening an approved stipulation. This principle also extends to the claimant's argument that pre-

funding the MSA before the approval hearing constituted some form of misconduct. Administrative Law Judge Cohen could reasonably have determined that this was merely an operational convenience for the respondents and not a form of mistake or misrepresentation.

We also note that Administrative Law Judge Cohen found the respondents had fully complied with the terms of the stipulation and our examination of the record confirms that she reached a conclusion based on the facts. Notwithstanding his consent to the stipulation at the 2020 hearing and the respondents' performance of the terms of this agreement, the claimant contended that he was not in a position to understand the terms of the agreement at the time of the stipulation approval hearing due to an alleged medical impairment. See April 20, 2021 Transcript, pp. 10-14. He did not, however, present testimony from a medical professional to document this assertion. His only testimony regarding this allegation was from his wife, see id., p. 33, who stated that the claimant was suffering from a mental illness at the time of the stipulation approval. It is noted that counsel for the respondents lodged an objection. See id., pp. 54-56. Finally, we note that the record demonstrates that Mrs. Mikulski was present at the 2020 hearing, witnessed documents, and offered no objection to having her husband execute them at that time. See February 20, 2020 Transcript, p. 17.

Whether a claimant is competent to execute an agreement constitutes a question of fact. Administrative Law Judge Jannotta observed the claimant's demeanor at the stipulation approval hearing and made no observation on the record as to the claimant appearing confused, tired or inattentive. The claimant's wife was present at this hearing and offered no objection to proceeding at that time. In the absence of documentation of

the claimant's assertion, we must defer to Administrative Law Judge Jannotta's judgment that the claimant was able to act on his own behalf. Furthermore, at the hearing to open the stipulation, Administrative Law Judge Cohen was presented with the claimant's argument that he had a diminished capacity at the time of the 2020 hearing. She did not find this argument persuasive. Additionally, the failure of the claimant to present any expert medical opinion regarding his alleged mental incapacity can be seen as a failure to sustain his burden of proof. Since this is a question of fact and the fact-finder was unpersuaded by the claimant's testimony and evidence, as an appellate body we must defer to the fact-finder's determination.

We do not believe Administrative Law Judge Cohen was compelled by the arguments and evidence presented by the claimant to open a properly executed full and final settlement of his claim. As the standards required under General Statutes § 31-315 to set aside a stipulation were not met by the claimant, we must affirm the October 21, 2021 Findings and Orders

Administrative Law Judges Toni M. Fatone and Soline M. Oslena concur in this Opinion.