S. Hoang v. WCAB (Howmet Aluminum Casting, Inc.), No. 2277 C.D. 2011 (Commw. Ct., August 20, 2012)

Issue: Whether the WCJ erred in finding that the parties' Compromise and Release Agreement was formulated without mutual or unilateral mistake and contained no inconsistent terms regarding the payment of medical bills.

Answer: No. The claimant failed to produce credible evidence of mutual or unilateral mistake. The terms of the Compromise and Release Agreement are not inconsistent because the language specifically states the intent of the parties.

Analysis: Claimant sustained an injury in the nature of carpal tunnel syndrome on October 5, 2007 while in the course and scope of his employment. Employer accepted the injury via Notice of Compensation Payable and claimant received temporary total disability benefits.

On May 7, 2009, the parties entered a Compromise and Release Agreement. The parties sought approval of the C&R at a hearing. As part of the claimant's testimony, he stated that he understood that he was giving up his right to any workers' compensation benefits. Following his testimony, the Judge found that the claimant understood the legal significance of the Agreement and approved it.

On June 19, 2009, claimant's counsel wrote to claimant to inform him that one of his treating physicians was having trouble receiving payment on an outstanding bill and that under the C&R all past medical bills should have been paid. On April 30, 2010, claimant's counsel wrote a letter to the employer's counsel enclosing a bill and stating that claimant believed employer paid all bills at the time of settlement. On May 6, 2010, claimant's counsel sent a second letter to the employer's counsel claiming to restate a phone conversation in which employer's counsel admitted to being unaware of the outstanding bill at the time of settlement and that he was told the treatment at issue was unrelated. Claimant subsequently filed a Review and Penalty Petition seeking to have the Compromise and Release Agreement rescinded based on a mutual mistake of fact regarding whether any medical bills remained unpaid as of May 7, 2009. The WCJ denied the Petitions finding that there was no direct evidence of such a mistake, that the C&R hearing did not address medical bills, and nothing in the C&R acknowledged that all reasonable and necessary medical bills had been paid.

Claimant appealed to the WCAB alleging that the Judge committed error in finding that there had been no mutual mistake and that the Judge failed to address claimant's arguments concerning unilateral mistake and inconsistent terms. The Board agreed with the WCJ that the claimant failed to produce clear evidence that the employer was mistaken regarding the payment of medical bills or that the employer knew of claimant's mistaken belief. The Board also found that the terms of the C&R were not inconsistent because the C&R stated that it "resolves all indemnity and medical" and did not state that the employer ensured the payment of medical bills. The Board therefore affirmed the WCJ's Decision.

Before the Commonwealth Court, claimant maintained the same arguments it offered to the WCAB. The Commonwealth Court noted that courts may rescind a C&R based on a clear showing of fraud, deception, duress, or mutual mistake. North Penn Sanitation, Inc. v. WCAB (Dillard), 850 A.2d 795, 799 (Pa. Commw. Ct. 2004). The Court also noted that the party seeking to set aside the Agreement has the burden and the test to set aside a C&R on the basis of mistake is more stringent than for fraud or duress. Id. The Court noted that the claimant submitted evidence in the nature of the two letters drafted by claimant's counsel, but nothing more. The Court found that the two letters did not amount to credible evidence of a mutual mistake. Additionally, neither the C&R nor claimant's testimony at the hearing referred to an agreement for employer to pay claimant's outstanding medical bills.

With regard to claimant's unilateral mistake argument, the Commonwealth Court found no credible evidence concerning employer's intent to enter the agreement with knowledge of claimant's mistake of fact, nor that the claimant communicated to the employer that he did not believe outstanding medical bills were waived under the C&R. The Commonwealth Court also found that claimant failed to demonstrate inconsistent terms because none of the terms indicated that claimant's outstanding medical bills were covered and because one of the terms of the Agreement established that the parties agreed that the C&R "resolves all indemnity and medical to which claimant may be entitled…[and] represents a full and final settlement…"

Therefore, the Commonwealth Court determined that claimant failed to overcome his burden and affirmed the WCAB Decision.

Conclusion and Practical Advice: The lesson to be learned from this case is two-fold. First, parties can avoid further litigation following a Compromise and Release by ensuring that documents are well-drafted. When drafting a C&R, be sure to clearly state the obligations parties have, but also state the rights and responsibilities that are being waived by the agreement. In doing so, the parties can avoid having to rely on the court to determine the intent of a C&R. Second, the holding also provides useful analysis regarding evidentiary issues associated with seeking or defending against a request for the rescission of a C&R based on mistake or inconsistent terms. Pages 7-13 illustrate the appropriate analysis for dealing with this issue.

Penn State University and PMA Insurance Group v. WCAB (Rabin, Deceased), No. 2224 C.D. 2011 (Commw. Ct., August 15, 2012)

Issue: Whether claimant met her burden of proof that decedent was injured in the course and scope of employment when he fell during an off premise lunch. Whether claimant met her burden of establishing that decedent's fall substantially contributed to his death such that claimant was entitled to death claim benefits.

Answer: Yes. Claimant met her burden of showing that decedent's fall occurred in the course and scope of his employment because he was furthering the employer's business during the lunch. Claimant met her burden of proving that the decedent's fall substantially contributed to his death because claimant's expert witness testified that the fall contributed to decedent's death and testified in detail regarding how the fall contributed to decedent's death.

Analysis: Claimant filed a Fatal Claim Petition in June 2007 alleging that decedent, Dr. Jack Rabin, a professor of administration, died on November 13, 2006 from work-related injuries. Claimant presented her own testimony as well as that of a doctrinal student, Theodore Aaron Wachhaus, Jr., and decedent's treating physician, Dr. Acri.

According to Wachhaus, he and decedent met at a restaurant six to eight times in 2006 for teaching purposes. On October, 20, 2006, Wachhaus met the decedent around noon at Charlie Brown's to finalize the outline of his dissertation. The two ordered lunch, but decedent requested that the orders be held until he asked for them. The two discussed the dissertation in detail, and then got up to go to the salad bar. Decedent subsequently fell. Wachhaus testified that, if decedent had not been injured, the two would have continued to discuss public administration until 3:00 p.m.

On the day of the fall, decedent underwent surgery for his injuries. Decedent was discharged, but later returned to the hospital with complaints of pain. Dr. Acri, who treated claimant since 2000, transferred decedent to the ICU. Decedent subsequently died.

Dr. Acri testified that the fall and subsequent injuries were the triggers to decedent's death explaining that the injuries caused decedent's kidneys and heart to fail and suppressed his immune system to the point that he succumbed to aseptic pneumonia. Dr. Acri referred to blood tests and explained how they supported his conclusions.

Meanwhile, employer presented testimony from Dr. Manaker who opined that claimant's fall did not cause his death. However, Dr. Manaker admitted that he was not sure what caused claimant's death. The WCJ found Wachhaus and Dr. Acri credible. He concluded that the decedent was actually engaged in furtherance of the employer's business and that he died as a result of the injuries he sustained in the fall. The Judge granted claimant's Fatal Claim Petition. The WCAB affirmed the Decision. The Commonwealth Court affirmed the WCAB's Decision.

Employer raised two arguments before the Commonwealth Court. First, employer suggested that decedent could not be engaged in the furtherance of employer's business because decedent was a stationary employee on a lunch break at a public restaurant.

The Commonwealth Court acknowledged that lunch and off premises activities are not usually considered to be in the course and scope of employment, but there are exceptions to this rule where the claimant is actually engaged in the furtherance of the employer's affairs at the time. Carretti v. Schwanger, 589 A. 2d 1165, 1167 (citing Tatrai v. Presbyterian University Hospital, 439 A.2d 1162 (Pa. 1982). The Judge found that decedent was engaged in the furtherance of the employer's affairs based on Wachhaus' testimony. The Court also recognized that working lunches were previously found to be in furtherance of an employer's business in Speight v. Burens. 538 A.2d 542 (Pa. Super. 1988).

Second, employer argued that claimant failed to meet the burden of proving that the fall was a substantial contributing factor to the decedent's death. Employer asserted that Dr. Acri's testimony was equivocal on the issue of causation because Dr. Acri stated merely that decedent's work contributed to his demise. Employer relied on Chicoine, a case in which claimant's expert refused to characterize an injury as a substantial contributing factor.

The Commonwealth Court disagreed. The Court acknowledged that claimant has the burden to show that the work injury was a substantial contributing factor to decedent's death where there are competing causes. Pokita v. WCAB (U.S. Air), 639 A.2d 1310, 1312 (Pa. Commw. Ct. 1994). However, claimant need not present testimony containing those actual words. Rather, it can be inferred. Thomas Lindstrom Co. v. WCAB (Braun), 992 A.2d 961, 967 (Pa. Commw.) (citations omitted), *appeal denied*, 13 A.3d 481, and *appeal denied*, 13 A.3d 480 (2010). The Court found that it could be inferred that the fall was a substantial contributing factor because Dr. Acri testified that the fall contributed to decedent's death and described precisely how it contributed to decedent's death.

Conclusion and Practical Advice:

This case nicely articulates the burden placed on a claimant when asserting that a lunch or off premise activity resulted in an injury within the course and scope of employment. It also articulates the burden placed on a claimant when asserting that a work-related injury caused disability or death. It should be remembered that, although the activity decedent is engaged in occurs during a lunch or off premises, it may be within the course and scope of employment, as it was here, ***if*** the employee was engaged in the furtherance of the employer's affairs.

It should also be remembered that a medical expert need not include the phrase "substantial contributing factor" when offering his opinion that a work-related injury caused disability or death. Rather, it can be inferred where the expert states that the injury caused disability or death and explains in detail why he believes the injury caused the disability or death.