

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001646-WC

SWARTZ MOWING

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-07-78069

ANTHONY SMITH; HON. CHRIS DAVIS,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON AND KELLER, JUDGES; ISAAC,¹ SENIOR JUDGE.

KELLER, JUDGE: The Administrative Law Judge (the ALJ) issued an order enforcing a disputed settlement between the parties. Anthony Smith (Smith)

¹ Senior Judge Sheila R. Isaac sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute (KRS) 21.580.

appealed from that order to the Workers' Compensation Board (the Board), which vacated that ALJ's order and remanded for additional proceedings. Swartz Mowing (Swartz) appeals from the Board's opinion arguing that the Board erred because the ALJ's order was supported by sufficient evidence. Smith argues to the contrary. Having reviewed the record and the arguments of the parties, we affirm.

FACTS

The underlying facts are not in dispute. Smith timely filed his claim for workers' compensation benefits alleging that he suffered a work-related low back injury. The parties filed proof and attended a final hearing on February 25, 2010. On March 12, 2010, Smith's attorney sent correspondence to Swartz's attorney stating, "My client, Anthony Smith has elected to take \$4,000.00 to settle the case. Please prepare a Form 110 and send it to me."

On March 24, 2010, Swartz's attorney sent correspondence to Smith's stating, "Enclosed please find the proposed Form 110 settlement agreement reflecting settlement of the claim for \$4,000.00 for a full and final settlement and dismissal with prejudice. If it is satisfactory, please obtain Mr. Smith's signature where required, sign and forward to the ALJ for review and approval." The Form 110 attached to this correspondence provided that, in exchange for temporary total disability benefits already paid and a lump sum payment of \$4,000.00, Smith was waiving his rights to any and all additional benefits under the workers' compensation statute.

On April 20, 2010, Swartz's attorney called Smith's attorney to inquire about the status of the Form 110. Counsel for Smith stated that he had forwarded the Form 110 to Smith for his signature and that he had called Smith to ask about the status of the Form but that Smith had not signed it.

Because he had not received an executed Form 110, the ALJ rendered an opinion and award in this matter on April 27, 2010. We note that, in his opinion, the ALJ awarded Smith ongoing medical expense benefits and significantly more in income benefits than the \$4,000.00 recited in the attorneys' correspondence and Form 110. Swartz timely filed a petition for reconsideration/motion to vacate, asking the ALJ to vacate his opinion and award and to enforce the settlement as reflected in the Form 110. The ALJ granted Swartz's motion, vacated his opinion and award, and ordered Smith to sign the Form 110.

Smith appealed the ALJ's order to the Board arguing that the terms and/or conditions of the alleged settlement were not sufficiently clear to constitute an enforceable agreement. The Board found that

[a]rguably in this instance the correspondence between the parties, when viewed as a whole, contains information from which the ALJ might glean the terms of a completed settlement agreement for purposes of KRS 342.265(1). That having been said, upon closer scrutiny with the exception of the \$4,000.00 lump sum amount expressly set out in the March 12, 2010 letter from Smith's attorney, the remainder of the terms of the agreement approved by the ALJ, i.e., those waiving all of the claimant's rights under KRS Chapter 342 and dismissing his case with prejudice, appear unilaterally in

the Form 110 prepared by Swartz's defense attorney, which Smith for whatever reason ultimately declined to execute. Under such circumstances, we believe consistent with the mandates of Coalfield Telephone Company v. Thompson, supra, in order to determine if a true meeting of the minds between the parties concerning all purported settlement terms was achieved prior to the decision on the merits, the ALJ had a duty to look behind the cumulative memorandum and more thoroughly investigate matters by reopening proof time and conducting a second hearing.

Swartz appeals from the Board's opinion, arguing that the attorneys' correspondence constituted an enforceable settlement agreement; that Smith has never contested the validity of the terms in the Form 110; and that Smith's attorney has made no argument and offered no evidence that he exceeded his authority when he offered to settle the claim for \$4,000.00. Smith argues that the correspondence from his attorney sets forth only one term, the amount of settlement, and that all other terms came unilaterally from Swartz's attorney. Thus, according to Smith, the Board correctly found that the ALJ was required to go beyond the documents to determine if there had been a true meeting of the minds.

STANDARD OF REVIEW

When reviewing one of the Board's decisions, this Court will only reverse the Board when it has overlooked or misconstrued controlling law or so flagrantly erred in evaluating the evidence that it has caused gross injustice. *Western Baptist Hospital v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992).

ANALYSIS

To be enforceable, a settlement agreement must be signed by the parties or their representatives and approved by an ALJ. Kentucky Revised Statute (KRS) 342.265(1). Generally, the parties set forth the terms of any settlement on a Form 110. However, no such document is required and correspondence between the parties may suffice as long as the terms are complete. *Coalfield Telephone Co. v. Thompson*, 113 S.W.3d 178, 181 (Ky. 2003).

In *Coalfield*, which both parties cite for support, Coalfield's attorney sent a letter to Thompson's attorney offering to settle Thompson's claim. That letter set forth what Thompson had demanded, the basis for that demand, and the lump sum amount Coalfield was prepared to offer to settle Thompson's claim for income benefits. Furthermore, the letter asked Thompson to provide an amount he would accept in exchange for a "complete buyout" of his claim. In his response, Thompson's attorney stated that his client accepted the lump sum offer to settle his claim to income benefits and expressly noted that the settlement was not a "complete buyout." *Id.* at 179-180.

Before a settlement agreement could be prepared, submitted, or approved, Thompson died. Thompson's mother, as administrator of his estate, intervened and sought to enforce the settlement. The ALJ found that, because there was no settlement agreement signed by the parties or their representatives, an enforceable agreement had not been reached. On appeal, the Supreme Court of Kentucky held that the "letters from representatives of both parties clearly indicated the terms to which they agreed, and there is no assertion that the terms were incomplete [Therefore,] the ALJ should have addressed the substance of the agreement rather than its form." *Id.*

Swartz argues that the letter from Smith's attorney, the letter from Swartz's attorney, and the Form 110 constitute an enforceable settlement agreement, just as the letters in *Coalfield* did. Smith argues that the Board correctly determined that the letters herein do not contain sufficient agreed-to terms and conditions to constitute an enforceable agreement. We agree with Smith.

Initially, we note that the letter from Smith's attorney differs from the letter from Coalfield's in two significant ways. First, the letter from Coalfield's attorney was a counter-offer to a prior demand from Thompson. The letter from Smith's attorney was a demand that does not set forth what, if any, settlement negotiations had preceded it.

Second, the letter from Coalfield's attorney specifically set forth the amount of the offer, how the amount was calculated, and what consideration was expected in return. The letter from Smith's attorney only contains one term, the amount. It

does not state how that amount was calculated or what Smith was offering in consideration if his demand was met. The letter from Coalfield's attorney was a valid offer with clearly set forth terms that were subject to acceptance or rejection. However, because of its vagueness, it is not clear that the letter from Smith's attorney was even a valid demand.

Second, even if the letter from Smith's attorney was a valid demand, the letter from Swartz's attorney was not a valid acceptance of that demand. In *Coalfield*, the letter from Thompson's attorney mirrored the terms set forth in Coalfield's offer, i.e., it recited the amount offered and the consideration from Thompson in exchange for that amount. However, the letter from Swartz's attorney altered the terms in Smith's "demand" by including a complete waiver of entitlement to benefits, which was not mentioned in the demand.

Third, we note that the acceptance by Thompson of Coalfield's offer was not equivocal. However, the acceptance of Smith's demand by Swartz was equivocal, stating that the Form 110 was "proposed" and subject to the satisfaction of Smith and/or his attorney. Therefore, we agree with the Board that it is not possible to tell from the correspondence between counsel if there had been a meeting of the minds.

Finally, we agree with Swartz that Smith did not deny the accuracy of the terms set forth in the Form 110. Furthermore, we agree with the Board that "the narrowness in scope of Smith's assertions concerning the actual extent of negotiations and genuine intent of the parties regarding the purported settlement

[is] . . . somewhat troubling." However, on remand, the ALJ can address those issues once he has conducted the appropriate additional proceedings as set forth in the Board's well-reasoned opinion.

CONCLUSION

For the foregoing reasons, we affirm the Board and remand this matter to the ALJ to conduct additional proceedings consistent with our opinion and the Board's.

ALL CONCUR.

BRIEF FOR APPELLANT:

Guillermo A. Carlos
James B. Cooper
Lexington, Kentucky

BRIEF FOR APPELLEE:

McKinnley Morgan
London, Kentucky