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# Commonwealth of Kentucky

# Court of Appeals

NO. 2014-CA-001485-WC

CROSS MAINTENANCE, LLC — APPELLANT

v. PETITION FOR REVIEW OF A DECISION OF THE WORKERS' COMPENSATION BOARD ACTION NO. WC-12-70373

MARK R. RIDDLE;
HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD — APPELLEES

AND NO. 2014-CA-001593-WC

MARK R. RIDDLE — CROSS-APPELLANT

v. CROSS-PETITION FOR REVIEW OF A DECISION OF THE WORKERS' COMPENSATION BOARD ACTION NO. WC-12-70373

CROSS MAINTENANCE, LLC;
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OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, J. LAMBERT, AND MAZE, JUDGES.

MAZE, JUDGE: Appellant/Cross-Appellee, Cross Maintenance, LLC (hereinafter "Cross"), petitions for review of a decision of the Workers' Compensation Board ("the Board") remanding an opinion of the Administrative Law Judge (ALJ) which found a settlement agreement between the parties to be enforceable. Appellee/Cross-Appellant, Mark Riddle, also petitions for review of the Board's decision, contending that the Board erroneously vacated and remanded the matter for further findings.

We agree with the Board that Cross's arguments against enforcement of the settlement agreement are unpersuasive and that the ALJ's Opinion and Order lacked findings on essential elements of that agreement. Hence, we affirm.

**Background**

Following a work-related accident which caused Riddle to lose range of motion and grip strength in his left hand, Riddle filed a workers' compensation claim on May 9, 2013. In the weeks leading up to and following the October 23, 2013 evidentiary hearing, the parties engaged in ongoing settlement negotiations. Following the hearing, on October 24, Cross countered Riddle's initial demand with an offer of a $25,000 lump sum payment and $150 weekly payments thereafter for 425 weeks. Counsel for Riddle responded by e-mail, seeking

clarification: "Just so I understand the terms, is this with all rights open? Or is this for a complete dismissal? Or, something else?" Cross replied the same day, "This would be for a complete dismissal." Later on October 24, Riddle's attorney presented a counteroffer of $50,000 lump sum and $200 per week for 425 weeks in exchange for a complete dismissal.

Counsel for Cross did not respond to Riddle's counteroffer until November 22, 2013. In doing so, Cross e-mailed Riddle's attorney as follows:

> We haven't yet received [any mail] today, but I am assuming that the judge has not yet issued a decision on this claim. My last offer had been for a lump sum of $25,000, plus $150 per week for 425 weeks. Your last demand had been for a lump sum of $50,000, plus $200 per week for 425 weeks. I have spoken further with my client. They have authorized me to offer $40,000, plus $175 per week as a compromise. Please discuss that with your client as soon as possible, and let me know if [he] is agreeable. Thank you.

Near the close of business on the same day, Riddle's attorney notified Cross by e-mail and voicemail that Riddle accepted Cross's offer of settlement. Counsel for Cross had e-mailed the ALJ earlier in the day informing him of the likelihood of settlement and requested that the ALJ delay issuing an opinion until the following week. Unbeknownst to both parties at the time, the ALJ had signed and mailed to counsel an Opinion and Award[1] the day before.

Upon receiving his copy of the ALJ's opinion in the mail on November 25, counsel for Riddle conferred with Cross's attorney, who was out of

[1] The ALJ concluded, *inter alia*, that Riddle had suffered a 5% permanent impairment and that Riddle was not entitled to vocational rehabilitation as he had asserted.

his office, and the two initially agreed that they still had a valid settlement agreement. Counsel for Riddle conveyed to Cross's attorney a Form 110 settlement agreement.[2] However, on December 4, 2013, after reviewing the ALJ's decision and relevant case law, counsel for Cross advised Riddle's attorney that he would not sign the Form 110 settlement agreement.

Following Riddle's motion to enforce the terms of the parties' agreement of November 22, the ALJ reopened proof and held a hearing on February 25, 2014. The ALJ's Order doing so stated that evidence presented by the parties was to be "limited solely to the question of whether a meeting of the minds in regard to all terms of the alleged settlement agreement arose, thus rendering the alleged settlement agreement enforceable." During the hearing, counsel for both parties testified regarding settlement negotiations. Of note, counsel for Riddle testified that at the time of the agreement on November 22, he believed Cross's final offer of lump sum and weekly benefits to be in exchange for complete dismissal of Riddle's claim.

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[2] The Form 110 stated, in part:

> In an effort to resolve the claim, the Plaintiff and Defendant/Employer have each compromised their respective positions and have agreed to enter into this Settlement Agreement. The Plaintiff is agreeing to accept $40,000.00 payable in a lump sum and $175.00 per week for 425 weeks, beginning the date this Form 110 is approved, in exchange for a complete dismissal of his claim for indemnity benefits …, medical expenses/benefits, right to reopen and vocational rehabilitation, with prejudice. The Employer will pay Riddle and his attorney $40,000.00 in a lump sum and $175.00 per week for 425 weeks in exchange for a complete dismissal of this claim and all rights under the Workers' Compensation Act.

The ALJ's subsequent Opinion and Order granted the motion to enforce the terms of the parties' November 22, 2013 agreement. The ALJ found that a meeting of the minds occurred between the parties during settlement negotiations and that the agreement contained all essential terms. Cross appealed this decision to the Board after the ALJ overruled its motion to reconsider.

Like the ALJ, the Board found no merit to Cross's arguments that a mutual mistake of fact prevented a meeting of the minds from occurring or that an essential term of the agreement, the start date for Riddle's weekly benefits, had been omitted and therefore rendered the agreement incomplete. The Board further rejected Cross's assertion that KRS[3] 342.285, by declaring ALJ opinions "final and enforceable," operated to nullify the parties' subsequent agreement. However, the Board also concluded that the ALJ's findings of fact were insufficient concerning other essential terms, including whether settlement was in exchange for Riddle's complete dismissal of his claim, were part of the agreement. Hence, the Board vacated the ALJ's Opinion and Order and remanded the matter for further findings.

Cross filed a Petition for Review from the Board's decision. Riddle followed suit, and this Court consolidated the two petitions into the present appeal.

**Standard of Review**

When reviewing a decision of the Board, we will affirm absent a finding that the Board has misconstrued or overlooked controlling law or has so flagrantly erred in evaluating the evidence that gross injustice has occurred.

[3] Kentucky Revised Statutes.

*Western Baptist Hosp. v. Kelly*, 827 S.W.2d 685, 687–88 (Ky. 1992). In order to properly review the Board's decision, we are ultimately required to review the ALJ's underlying opinion. *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986). Furthermore, we will affirm the underlying findings of fact if substantial evidence existed in the record to support them. *See Carnes v. Parton Bros. Contracting, Inc.*, 171 S.W.3d 60, 68 (Ky. App. 2005). Relevant to this case, we note that the decision of a Board to remand a case to the ALJ for further findings is appropriate when the Board is "unable to afford meaningful review" of the ALJ's conclusions without such findings. *Campbell v. Hauler's, Inc.*, 320 S.W.3d 707, 711 (Ky. App. 2010).

**Analysis**

As we stated, both parties seek review of the Board's decision. Cross presents contractual and statutory bases for its assertion that the ALJ's November 21, 2013 Opinion and Award should stand. Overall, Cross insists that the meeting of the minds required for the settlement agreement to be valid never occurred; and even if such a meeting of the minds did occur, KRS 342.285 dictated that the ALJ's ruling superseded the subsequent settlement. Riddle claims that the Board erred in finding the ALJ's findings to be insufficient.

**I. Mutual Mistake Regarding the ALJ's Presettlement Award**

"An agreement to settle a workers' compensation claim constitutes a contract between the parties." *Whittaker v. Pollard*, 25 S.W.3d 466, 469 (Ky. 2000). "Once approved, an agreement to settle a claim becomes an award." *Id*., citing to *Stearns Coal & Lumber Co. v. Whalen*, 266 Ky. 227, 98 S.W.2d 499 (1936). Hence, principles and defenses common to contract law apply to settlement agreements like the one in the present case.

Cross first argues that the ALJ's Opinion and Order on November 21, 2013, created a mutual mistake of fact on the part of the parties as they negotiated for settlement on November 22; hence, no meeting of the minds took place. For such a defense to be viable, Cross must prove three elements: 1) that the mistake was mutual, not unilateral; 2) that the mutual mistake is proven in the record by clear and convincing evidence; and 3) that the parties had actually agreed upon terms different from those expressed in the written instrument. *See Abney v. Nationwide Mut. Ins. Co.*, 215 S.W.3d 699, 704 (Ky. 2006), citing to *Campbellsville Lumber Co. v. Winfrey*, 303 S.W.2d 284, 286 (Ky. 1957). More fundamentally, the alleged mistake "must be one as to a material fact affecting the agreement and not one of law[.]" *Id*., citing to *Sadler v. Carpenter*, 251 S.W.2d 840, 842 (Ky. 1952).

It is first important to establish what the "written instrument" was in the present case. In applying the above precedent, and for purposes of evaluating the Board's application of *Coalfield Tel. Co. v. Thompson*, 113 S.W.3d 178 (Ky. 2003), the "written instrument" most reasonably equates to the terms offered and

accepted in the parties' e-mails of November 22, 2013. The Form 110, which provides a convenient abundance of detail in its terms, nevertheless does not so equate because Riddle drafted this document, but Cross did not sign it or otherwise agree to its terms.

Turning our attention to Cross's claim of mutual mistake, we conclude that Cross failed to establish an element essential to that claim. It cannot be said that the parties agreed, or that Cross is now being held, to "terms different from those expressed" in the e-mails of November 22, 2013. Rather, the monetary terms Riddle seeks to enforce are those which Cross offered and Riddle accepted.

Furthermore, Cross failed to prove by clear and convincing evidence of record that the ALJ's November 21 decision and the parties' November 22 agreement were mutually exclusive; or that the former altered Cross's willingness or ability to settle. On appeal, Cross can only muster the following as proof to this effect: "If the parties had been aware that a decision had been rendered on … November 21, 2013, one or the other of them might have withdrawn from settlement negotiations, or that knowledge might have altered the position of one of the parties as to settlement." This statement is conclusory and it is conjecture. More importantly, it is unsupported by any authority or evidence in the record; and therefore, it is insufficient to support Cross's assertion that a mutual mistake existed which prevented a meeting of the minds or otherwise altered both parties' willingness or ability to enter into a settlement.

The unambiguous terms of a settlement agreement must be read to effectuate the parties' intent at the time the contract was formed. *See 3D Enterprise Contracting Corp. v. Louisville and Jefferson Cnty. Metro. Sewer Dist.*, 174 S.W.3d 440, 448 (Ky. 2005), citing to *Hoheimer v. Hoheimer*, 30 S.W.3d 176, 178 (Ky. 2000). The ALJ's preexisting Opinion and Award notwithstanding, the intent of the parties at the time of their agreement on November 22, 2013, was to settle Riddle's claim under the terms negotiated on that date. Like the Board, we observe nothing in the record which demonstrates the existence of a mutual mistake which prohibited enforcement of those terms or that intent.

**II. The Effect of the ALJ's Presettlement Order and Award**

KRS 342.285(1) states

> An award or order of the administrative law judge as provided in KRS 342.275, if petition for reconsideration is not filed as provided for in KRS 342.281, shall be conclusive and binding as to all questions of fact, but either party may in accordance with administrative regulations promulgated by the commissioner appeal to the Workers' Compensation Board for the review of the order or award.

Cross asserts that the ALJ's Opinion and Award of November 21 rendered the parties' November 22 agreement "a legal nullity" because the former was conclusive and binding under the statute. The Board declined to apply KRS 342.285(1), stating that the statute "does not prohibit the parties from reaching an agreement after the decision is rendered which contains terms contrary to provisions of the ALJ's decision." We once again agree with the Board.

KRS 342.265(1) states, in pertinent part,

> If the employee and employer and special fund or any of them reach an agreement conforming to the provisions of this chapter in regard to compensation, a memorandum of the agreement signed by the parties or their representatives shall be filed with the commissioner, and, if approved by the administrative law judge, shall be enforceable….

As we have stated, under *Thompson*, correspondence between attorneys, such as the e-mails between counsel for Cross and Riddle on November 22, 2013, can constitute a sufficient memorandum of an agreement under KRS 342.265. 113 S.W.3d at 179. Furthermore, as our Supreme Court has stated, KRS 342.265(1) is to be interpreted as promoting "the prompt disposition of workers' compensation claims with a minimum of expense by permitting parties to agree to settle their dispute." *Hudson v. Cave Hill Cemetery*, 331 S.W.3d 267, 271 (Ky. 2011), citing to *Newberg v. Weaver*, 866 S.W.2d 435 (Ky. 1993).

These factors lead us to agree with the Board that an ALJ's rendered Opinion and Award does not prohibit the parties from reaching a subsequent settlement of the issues in question. Rather, we reaffirm what our Supreme Court had stated: that "an ALJ may approve a settlement based upon correspondence between the parties if the correspondence memorializes all of the terms to which they agreed and neither party asserts the terms are incomplete." *Hudson*, 331 S.W.3d at 271, citing to *Thompson*. After reopening proof in the present case, the ALJ properly did as the Supreme Court and KRS 342.265 instruct.

KRS 342.285 did not act to prevent the parties from subsequently settling Riddle's claim. Therefore, pursuant to *Thompson* and *Hudson*, if the e-mails between counsel for Cross and counsel for Riddle indeed memorialized all of the terms to which they agreed, the agreement was valid and enforceable.

**III. Completeness of the November 22 Agreement's Terms**

Under the applicable rules of contract law, a settlement agreement is valid "if it satisfies the requirements associated with contracts generally," including an expression of full and complete terms. *Cantrell Supply Inc., v. Liberty Mut. Ins. Co.*, 94 S.W.3d 381, 384 (Ky. App. 2002). Cross argues on appeal that two essential or material terms – when weekly payments would commence and whether the settlement was in exchange for a complete dismissal of Riddle's claim – remained undecided, thus preventing an agreement from occurring. While the Board found the commencement date of weekly benefits to be a term nonessential or nonmaterial to the agreement, it concluded that the ALJ's findings regarding other essential elements of the agreement to be lacking. We agree with the Board on both points.

The date for commencement of Riddle's weekly payments was not a term material or essential to the parties' agreement. Rather, the essential terms, such as the lump sum amount and the amount and duration of the weekly benefit, were present in the e-mails of November 22. Even Cross admitted before the ALJ that the November 22 e-mails represented a "broad outline[] for our settlement and a fairly detailed payment structure" and that the parties "had all the detail of the

payments." In sum, we agree with the Board that failure to state a specific date for payments to begin did not prevent the parties' agreement. Such a term could easily have been negotiated or added at a later time without disrupting the material terms or affecting the structure of the underlying settlement.

We further agree with the Board's conclusion that the ALJ's decision of March 24, 2013, lacked sufficient findings concerning more material terms of the agreement, including whether the financial terms the parties negotiated were in exchange for a complete dismissal of Riddle's claim. Evidence of record suggests that such a complete dismissal had been part of the negotiations leading up to the e-mails of November 22. Counsel for Riddle also testified that Cross's final offer had been in exchange for a complete dismissal and that he believed all issues had been resolved by the settlement. Nevertheless, language to this effect was not present in the November 22 e-mails which would become the written agreement; and though the Form 110 did include such language, Cross did not sign it. Such a conflict or omission in the record regarding such an important issue required a finding of fact from the ALJ. Therefore, we cannot dispute the Board's conclusion that further findings on this issue were required.

Our review of the record leads us to conclude that the Board did not so flagrantly err in evaluating the evidence that gross injustice has occurred. *Western Baptist Hosp.*, 827 S.W.2d at 687-88. Therefore, the Board's vacation of the ALJ's Opinion and Order is affirmed and remand is appropriate.

## Conclusion

For the reasons stated herein, we affirm the Board's Order in its entirety, including its decision to vacate the ALJ's Opinion and Order of March 24, 2014. Pursuant to the Board's decision, the matter must be remanded to the ALJ for findings regarding the completeness of the terms identified by the Board and as negotiated and understood by the parties at the time of their agreement on November 22, 2013.

ALL CONCUR.

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