Filed 9/22/03 Luckey v. WCAB (Cal. Dept. of Youth Authority) CA5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

ALBERT V. LUCKEY, Petitioner, v. WORKERS' COMPENSATION APPEALS BOARD, CALIFORNIA DEPARTMENT OF YOUTH AUTHORITY et al., Respondents.	F041552 (WCAB Nos. SAC 151527, SAC 214426 & SAC 262526)

THE COURT*

ORIGINAL PROCEEDINGS; petition for writ of review. Suzanne F. Dugan, Administrative Law Judge.

Landau & Geller and Michael S. Geller, for Petitioner.

No appearance by Respondent Workers' Compensation Appeals Board.

Richard Krimen, Robert W. Daneri, and David M. Goi, for Respondents California Department of Youth Authority and State Compensation Insurance Fund.

-ooOoo-

* Before Dibiaso, Acting P.J., Vartabedian, J., and Buckley, J.

After unsuccessfully petitioning this court, Albert V. Luckey (Luckey) petitioned the Supreme Court to review a decision of the Workers' Compensation Appeals Board (WCAB) declining to reopen a disability claim settled under a compromise and release agreement (C&R). The Supreme Court granted review and instructed this court to issue a writ of review. Following oral argument and a second review, we again find Luckey's claim lacks merit and affirm the decision of the WCAB.

BACKGROUND

Luckey sustained a work-related injury to his right knee on June 27, 1986, while working as a youth counselor for the California Department of Youth Authority (CYA). In May 1993, a workers' compensation administrative law judge (WCJ) formally approved a stipulated award providing Luckey with an award of 31 percent permanent disability, totaling $17,745, plus future related medical expenses.

Luckey filed two additional workers' compensation claims against CYA alleging work-related injuries on January 23, 1989, and May 9, 1994, to his psyche, high blood pressure, diabetes, and cardiovascular system. Luckey obtained legal representation in August 1994 after CYA refused to accept his new disability claims.

On June 12, 1997, a claims representative from CYA's adjusting agent, the State Compensation Insurance Fund (SCIF), wrote Luckey's counsel advising:

> "At this time I am willing to offer your client $8,000.00 to Compromise and Release his workers' compensation claim with a Thomas finding.[1] Per Dr. Donlon's report Mr. Luckey does not experience an industrial psychiatric injury and per Dr. Nishimura Mr. Luckey diabetes was not aggravated by his employment, and his hypertension is also non-industrial; however, in good faith I am offer[ing] your client $8,000.00 to C&R his claim."

---

1 While not directly relevant here, a *Thomas* finding permits settlement of vocational rehabilitation benefits only when a good faith issue as to the employer's liability exists. (*Thomas v. Sports Chalet, Inc.* (1977) 42 Cal.Comp.Cases 625, 633 (en banc); Cal. Code of Regs., tit. 8, § 10870; 2 Hanna, California Law of Employee Injuries and Workers' Compensation (rev. 2d ed. 2001) § 29.02[3][b].)

On July 9, 1997, the SCIF representative again wrote:

> "I have previously made an offer to Compromise and Release Mr. Luckey's claims for $8,000.00 with a Thomas Finding; however, to date, I have not received a response. [¶] At this time, I am again offering your client $8,000.00 to Compromise and Release his claim."

On July 29, 1997, Luckey's counsel responded:

> "Thank you for your letters of June 12, 1997 and July 9, 1997 offering settlement of the above referenced case. We have relayed your offer to our client, and he has instructed us to accept same on his behalf. [¶] Please forward settlement papers to this office at your earliest convenience . . . ."

In January 1998, Luckey, SCIF, and a WCJ adopted a C&R settling Luckey's claimed injuries of "high blood pressure, diabetes, cardiovascular system, psyche, right knee" in the amount $8,000. The C&R specifically referenced all three WCAB case numbers and listed his dates of injury as June 27, 1986, January 23, 1989, and May 9, 1994. A signed addendum expressly "referenced and incorporated" the 1993 stipulated award and added:

> "This C&R agreement specifically covers all prior medical treatment from whatever source as well as any future medical treatment that [Luckey] may need from whatever source.
>
> "This settlement releases all claims for injury to the same part of the body as listed in paragraph one whether specific or cumulative occurring at any time during [Luckey's] employment with defendant prior to date of this settlement. [¶] … [¶]
>
> "Consideration is included for, [Luckey's] counsel has fully explained, and [Luckey] fully understands that this Compromise and Release includes release for any benefits arising from any injury that may occur in the vocational rehabilitation process as per Carter/Roders,[2] and that if any

---

2 Under *Rodgers v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 567, 575-576 and *Carter v. County of Los Angeles* (1986) 51 Cal.Comp.Cases 255, 258 (en banc), an injured employee may, upon an unambiguous expression of intent, release an employer from prospective liability during vocational rehabilitation resulting from the primary injury. (See 2 Hanna, California Law of Employee Injuries and Workers' Compensation (rev. 2d ed. 2002) § 29.02[3][b].)

> such injury occurs, [Luckey] will receive no additional benefits for that injury, as to the knee injury."

Sometime in early 1998, Luckey's doctor informed Luckey that his workers' compensation case had been closed and he was no longer eligible for paid medical services.

Luckey's counsel contacted SCIF in April, July, and September 2001 inquiring about Luckey's knee treatment. SCIF's attorney replied:

> "In response to your September 26, 2001 letter, our records show the C&R was to include all worker's [*sic*] compensation claims to that date. The knee was included. The employer paid the C&R so that all further liability on all the body parts would be settled."

On October 19, 2001, Luckey's counsel asked SCIF to provide the referenced records demonstrating they intended the C&R to include all prior workers' compensation claims, including the knee injury. SCIF's attorney answered:

> "In response to your letter dated October 19, 2001, defendant asserts that any period for reconsideration has elapsed and relief under CCP 473[3] is not available after six months. SCIF is unable to recapture the total circumstances that existed at the time this C&R was negotiated because of the passage of time, faded memories and possible loss of file integrity. It would be extremely prejudicial to require SCIF to defend the C&R when the original facts are no longer available."

In March 2001, Luckey petitioned the WCAB to set aside the C&R. On June 24, 2002, after a pretrial settlement conference and subsequent hearing, the WCJ found the January 1998 C&R settled all three workers' compensation claims. The WCJ concluded the applicable five-year statute of limitations period to reopen a claim had expired and Luckey failed to prove the C&R involved extrinsic fraud or mistake. The WCAB denied Luckey's timely petition for reconsideration.

---

3 Code of Civil Procedure section 473, subdivision (b), provides in relevant part: "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect."

DISCUSSION

In reviewing a WCAB decision, an appellate court must determine whether, in view of the entire record, substantial evidence supports the WCAB's findings. (Lab. Code,[4] § 5952; *Garza v. Workers' Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317.) An appellate court is precluded from substituting its choice of the most convincing evidence for that of the WCAB and may not reweigh the evidence or decide disputed questions of fact. (§ 5953; *Western Growers Ins. Co. v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 227, 233.)

Luckey claims SCIF fraudulently "slipped in" the original 1986 knee injury into the 1998 C&R settlement agreement. He contends SCIF engaged in fraud by presenting a C&R document that differed from settlement negotiations.

Once the WCAB's statutory authority to reopen a case within five years from the date of injury lapses, the WCAB may only reopen a matter settled by a C&R upon a showing of fraud, mistake, duress, and undue influence. (*Johnson v. Workers' Comp. Appeals Bd.* (1970) 2 Cal.3d 964, 975.) As the Fourth Appellate District explained:

> " 'An approved workers' compensation compromise and release rests "upon a higher plane than a private contractual release; it is a judgment, with 'the same force and effect as an award made after a full hearing.' " [Citations.] Within five years of the date of injury, an order of the Board approving a C&R, like other orders, decisions and awards of the Board may be rescinded, altered, or amended by the Board upon a showing of 'good cause.' (Lab. Code, § 5803; [Citations].) However, upon the expiration of five years after the date of injury the Board's continuing jurisdiction to rescind, alter or amend its orders, decisions and awards terminates, except as to petitions for such relief filed before the expiration of the five-year period. (§ 5804; [Citations].) And when the Board's jurisdiction to rescind, alter or amend has terminated, an order approving a compromise and release, like other awards of the Board, constitutes a final judgment entitled to full res judicata effect. [Citations.] As with other final judgments, after the Board's jurisdiction to rescind, alter or amend has expired, an award may be set aside only upon a showing of fraud or mistake of the kind generally referred to as 'extrinsic' fraud or mistake. [Citations.]' " (*Smith*

---

[4] Further statutory sections are to the Labor Code.

v. Workers' Comp. Appeals Bd. (1985) 168 Cal.App.3d 1160, 1169-1170, fn. omitted.)

The *Smith* court agreed with the WCAB that " '[t]he difference between fraud and negligence is a … material one. If the former exists the case can be reopened. If only the latter exists, the case cannot be reopened.' " (*Smith v. Workers' Comp. Appeals Bd., supra,* 168 Cal.App.3d at p. 1167.) The court added that one party's unilateral mistake is "certainly not the type of mistake that would constitute a sufficient ground upon which to set aside a final judgment." (*Id*. at p. 1171.)

Here, there is no evidence SCIF engaged in any type of fraud, mistake, duress, or undue influence. In refusing to reopen Luckey's 1986 disability claim, the WCAB relied on the 1998 C&R. The WCAB noted that the C&R referenced all three disability claim numbers and specifically listed the June 27, 1986, date of the knee injury. The WCAB found Luckey's counsel specifically walked Luckey through the C&R document at the time of signing. Moreover, the C&R stated the original 1986 knee injury "is hereby referenced and incorporated into this agreement." Luckey testified that he reviewed the C&R with ample time and without any pressure or direct contact from SCIF. SCIF, Luckey, and Luckey's counsel each signed the C&R. The WCAB concluded Luckey simply failed to understand the C&R incorporated the 1986 knee injury despite sufficient opportunity to seek clarification.

Luckey contends the C&R is invalid because his counsel lacked authority to enter into an agreement covering the 1986 claim. However, as the WCAB noted, Luckey did not object to his counsel's assistance regarding the C&R. Further, Luckey's counsel stated at trial that he erred by advising Luckey to sign the C&R and by assuming it did not incorporate the 1986 knee injury, essentially admitting that he had some duty to protect Luckey's interests regarding the former injury. Significantly, Luckey signed the agreement in his individual capacity and the WCJ's approval helped protect him from unintentionally agreeing to an " 'unfortunate compromise[] because of economic pressure or lack of competent advice.' " (*Johnson v. Workers' Comp. Appeals Bd. supra,* 2 Cal.3d

at p. 973; see Cal. Code Regs., tit. 8, § 10882 [WCAB must "inquire into the adequacy of all compromise and release agreements"].)

Despite Luckey's contentions to the contrary, the correspondence between SCIF and Luckey's counsel, as well as testimony elicited at the workers' compensation hearing, fail to affirmatively indicate whether the parties intended to include continuing medical care for Luckey's knee. However, the very nature of the C&R prevented SCIF from continuing medical treatment for a referenced injury. While a *stipulated award* may permit an employer to continue further medical treatment, a *compromise and release agreement*, as the name implies, releases the employer's liability entirely. (*Price v. Workers' Comp. Appeals Bd.* (1992) 10 Cal.App.4th 959, 966; 2 Hanna, California Law of Employee Injuries and Workers' Compensation (rev. 2d ed. 2002) § 29.01[2].) Thus, Luckey should have been aware the C&R ended any further right to future benefits in exchange for $8,000.

In summary, Lucky failed to demonstrate that SCIF fraudulently or mistakenly enticed him into accepting a C&R that precluded CYA's obligation to provide future benefits related to his knee injury. Accordingly, the WCAB properly refused to reopen Luckey's disability claim settled under the C&R.

DISPOSITION

The order of the Workers' Compensation Appeals Board denying reconsideration is affirmed.