

MARGARET AMENDOLA, Employee, v. PERKINS REST. and U. S. FID. AND GUAR. CO.,  
Employer-Insurer/Petitioners.

WORKERS' COMPENSATION COURT OF APPEALS  
JULY 8, 1999

No. [REDACTED SSN]

HEADNOTES

VACATION OF AWARD - MISTAKE. Although the stipulation for settlement, drafted by an attorney for the employer and insurer, had contained language to the effect that the settlement was a full, final, and complete one, effectively precluding the employee's subsequent obtainment of supplementary benefits, there was good cause to grant the employer and insurer's petition to vacate the award on stipulation on grounds of mutual mistake of fact where both the employee, who had been unrepresented by counsel at the time of the settlement, and the insurance claims adjuster, who had negotiated the settlement, had filed affidavits asserting that, when they negotiated and entered into the settlement, they were both of the understanding that they were entering into a partial settlement of the employee's claim and that supplementary benefits would continue to be available to the employee on a weekly basis.

Petition to vacate award granted.

Determined by Pederson, J., Wheeler, C.J., and Johnson, J.

OPINION

WILLIAM R. PEDERSON, Judge

The employer and insurer petition this court to vacate an award on stipulation served and filed August 21, 1998. Concluding that the employer and insurer have shown good cause to vacate the award at issue, we grant the petition.

BACKGROUND

On March 6, 1987, Margaret Amendola, whose name on that date was Margaret Kernan, sustained a work-related injury to her ankle, back, arm, and knee in the course of her employment with Perkins Restaurant. Eventually, on July 23, 1998, Ms. Amendola [the employee], unrepresented by counsel on that date, entered into a stipulation for settlement of her claim against Perkins Restaurant [the employer] and its insurer. The settlement was negotiated for the insurer by claims adjuster Craig Channing, and the stipulation was drawn up for the parties by attorney Bernard E. Reynolds. The stipulation contained language to the effect that the settlement constituted a full, final, and complete settlement of any and all claims for workers' compensation benefits. Although not specifically listed as one of the benefits closed out, the

stipulation also effectively precluded the employee's subsequent obtainment of supplementary benefits. The employee and Mr. Channing have both filed affidavits asserting that, when they negotiated and entered into the settlement, they were both of the understanding that they were entering into a partial settlement of the employee's claim and that supplementary benefits would continue to be available to the employee on a weekly basis. The employer and insurer petition for vacation of the award on stipulation on grounds that the stipulation was executed under a mutual mistake of fact. The employee does not oppose that petition.

## DECISION

This court's authority to vacate a compensation judge's award is found in Minn. Stat. §§ 176.461 and, with regard to settlements, 176.521, subd. 3. An award may be set aside if the petitioning party makes a showing of good cause to do so. Good cause has long been held to exist if "(a) the award was based on fraud; (b) the award was based on mistake; (c) there is newly discovered evidence; or (d) there is a substantial change in the employee's condition." Stewart v. Rahr Malting Co., 435 N.W.2d 538, 539, 41 W.C.D. 648, 649 (Minn. 1989). These bases were codified in slightly different language in a 1992 amendment of Minn. Stat. § 176.461, which provided in part that any mistake, in order to be good cause for vacation, must be "a mutual mistake of fact." Minn. Stat. § 176.461 (emphasis added). The supreme court has indicated that the language of the 1992 codification with regard to a substantial change in condition is applicable to settlements postdating that codification, see Franke v. Fabcon, Inc., 509 N.W.2d 373, 377, 49 W.C.D. 520, 525 (Minn. 1993), and this court has concluded that vacation of an award on stipulation in general is governed by the law in effect on the date of the stipulation and award. Lapic v. Independent School Dist. #721, slip op. (W.C.C.A. Aug. 4, 1997), n.1, citing Franke.

In this case, there is undisputed affidavit evidence that the mistake alleged was a mutual mistake. This court has indicated that a mutual mistake of fact occurs "when both parties to a stipulation misapprehend some material fact relating to the settlement." Hoekstra v. Gibson Trucking, slip op. (W.C.C.A. June 7, 1999), citing Shelton v. Schwan's Sales Enters., 53 W.C.D. 110, 113 (W.C.C.A. 1995). In a mutual mistake case, "the inquiry focuses on what the situation was and what was known about it at the time of settlement." Franke, 509 N.W.2d at 377, 49 W.C.D. at 525. Although there might conceivably be grounds to argue that the mistake here alleged was not a mistake of fact as contemplated by the statute, no party to the settlement has made that argument. Finding reasonably good cause and no reason to conclude otherwise, we grant the petition of Perkins Restaurant and its insurer to vacate the award on stipulation in this matter served and filed August 21, 1998.