LEON RAY DUBBELDEE, Employee, v. CARR CONSTR. and CNA INS. CO., Employer-Insurer/Appellants, and STATE FARM INS. CO., MN DEP'T OF LABOR & INDUS. and BLUE CROSS/BLUE SHIELD, Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS
FEBRUARY 2, 2000

No. [REDACTED SSN]

HEADNOTES

PRACTICE & PROCEDURE - MATTERS AT ISSUE; SETTLEMENTS. Where the parties appeared before the compensation judge on the intervenor's motion for continuance following a last-minute agreement to settle between the employee and the employer and insurer, the intervenor did not contend it had been excluded from settlement negotiations, none of the parties were aware exclusion would be an issue at the hearing, and the compensation judge did not formally convene a Parker-Lindberg hearing, the compensation judge's finding that the intervenor was excluded from participation in settlement negotiations is vacated.

PRACTICE & PROCEDURE - DISMISSAL; SETTLEMENTS. The parties' post-hearing submission, although styled a "stipulation for settlement" does not settle any existing claim between the parties, but merely states the parties' agreement that the case could be continued. The parties' agreement was not binding on the compensation judge, and the judge properly dismissed the purported stipulation for settlement.

Affirmed in part and vacated in part.

Determined by: Johnson, J., Wilson, J., and Pederson, J.
Compensation Judge: Bernard Dinner

OPINION

THOMAS L. JOHNSON, Judge

Carr Construction and CNA Insurance Company appeal the compensation judge's finding that the intervenor, State Farm Insurance Company, was excluded from participation and settlement negotiations. We vacate that finding. They further appeal the compensation judge's order striking the case from the trial calendar until two potential intervenors were placed on notice, and the order that any party may petition to reset the case for an additional pretrial. We affirm the compensation judge's orders.

BACKGROUND[1]

[1] The factual background is derived from the pleadings in the case, the briefs of Carr Construction/CNA and State Farm and the transcript of the proceedings before Judge Dinner on June 25, 1999.

On November 2, 1995, the employee was injured when he was struck by a train while driving a vehicle across a railroad track. On November 2, 1998, the employee, through his attorney, Kevin O'C. Green, filed a claim petition claiming the November 2, 1995 injury arose out of and in the course of his employment with Carr Construction, the employer. On that date, the employer was insured by CNA Insurance Company. In their answer, Carr Construction and CNA denied the employee's injury arose out of and in the course of his employment and denied liability for any benefits. State Farm Insurance Company paid certain no-fault benefits as a result of the employee's injury and petitioned to intervene. By order filed March 11, 1999, State Farm was made a party intervenor.[2]

A telephone settlement conference was held on March 29, 1999, before Compensation Judge Joan Hallock. Mr. Green represented the employee, CNA was represented by Mr. Mark Kleinschmidt and Paul J. Simonett represented State Farm. (T. 10.) A second telephone settlement conference took place on May 10, 1999, before Judge Nancy Olson. Mr. Green, Mr. Kleinschmidt, and Mr. Simonett again participated in the settlement conference.

The case was set for hearing on June 25, 1999, before Judge Bernard Dinner in Mankato, Minnesota. On June 24, 1999, CNA and the employee apparently agreed to a settlement of the employee's claim.[3] That same day, Mr. Kleinschmidt apparently faxed a letter to Mr. Simonett containing a settlement offer by CNA to State Farm. State Farm rejected the offer. The next day, June 25, 1999, Mr. Kleinschmidt and Mr. Simonett appeared before Judge Dinner.[4] Mr. Green made no appearance on behalf of the employee. At the hearing, counsel for State Farm advised the court that he was notified the day before that the employee and CNA had settled their case and advised the court that State Farm had not settled its claim. Mr. Simonett then moved to continue the case and requested additional time to prepare to try the case on behalf of State Farm. (T. 6-9.) Mr. Kleinschmidt, on behalf of CNA, opposed the motion. (T. 9.) Counsel for CNA and State Farm then discussed, at length, the status of the case leading up to June 25, 1999. The parties also advised the court that Blue Cross/Blue Shield and the Minnesota Department of Human Services had potential intervention claims and had not been placed on notice of their right to intervene. (T. 43-44.) Mr. Kleinschmidt advised the court the offer to the employee was $35,000.00 in exchange for a full, final and complete settlement of all claims for workers' compensation benefits. (T. 30.)

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[2] At the hearing, State Farm stated it had an intervention interest of $70,000 consisting of $50,000 in medical expenses and $20,000 in wage loss benefits paid under a no-fault automobile insurance policy issued to the employee.

[3] At oral argument, counsel for the employee and the employer and insurer represented that a stipulation for settlement resolving the employee's claims had not been signed by the employee and Carr Construction/CNA.

[4] No witnesses were called and no exhibits were received into evidence at the hearing.

On July 26, 1999, a stipulation for settlement signed by the attorneys for the employee, CNA, State Farm and the Minnesota Department of Human Services was filed with the court. The stipulation recited that the signatories agreed that the case would be continued, and agreed that any order from the June 25, 1999 motion by State Farm for a continuance was set aside and vacated.

On July 27, 1999, the compensation judge filed a "Findings and Order Parker Lindberg Hearing." The compensation judge found that State Farm Insurance Company was effectively excluded from meaningful participation in settlement negotiations the day prior to the hearing. The compensation judge further found that counsel for State Farm was not given an opportunity to prepare for the hearing scheduled for June 25, 1999. Finally, the compensation judge found that Blue Cross/Blue Shield and the Minnesota Department of Human Services had potential intervention claims and were not given proper notice of their right to intervene or notice of the hearing. The compensation judge then ordered the employee's claim petition stricken from the calendar until the potential intervenors were placed on notice and given 60 days within which to file an intervention claim. Thereafter, any party could petition to reinstate the case on the calendar for further pretrial. The compensation judge ordered that in the event of further settlement negotiations, all parties must be given due notice and an opportunity to participate. Finally, the compensation judge dismissed the stipulation for settlement filed on July 26, 1999. Carr Construction and CNA appeal the compensation judge's findings and order.

On July 7, 1999, the Minnesota Department of Human Services filed a Petition to Intervene in the case. Intervention was granted by Order dated July 27, 1999. On August 12, 1999, Blue Cross and Blue Shield of Minnesota and Blue Plus filed a Motion to Intervene in the case. On August 17, 1999, Judge Dinner filed an Order allowing the intervention interest.

STANDARD OF REVIEW

On appeal, the Workers' Compensation Court of Appeals must determine whether "the findings of fact and order [are] clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 176.421, subd. 1 (1992). Substantial evidence supports the findings if, in the context of the entire record, "they are supported by evidence that a reasonable mind might accept as adequate." Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 59, 37 W.C.D. 235, 239 (Minn. 1984). Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings are to be affirmed. Id. at 60, 37 W.C.D. at 240. Similarly, findings of fact should not be disturbed, even though the reviewing court might disagree with them, "unless they are clearly erroneous in the sense that they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975).

DECISION

Carr Construction and CNA Insurance argue the compensation judge exceeded his authority in transforming a motion for a continuance by State Farm into a Parker-Lindberg hearing. See Parker-Lindberg v. Friendship Village, 395 N.W.2d 713, 39 W.C.D. 125 (Minn. 1986). The appellants assert State Farm never contended it was excluded from settlement negotiations and never requested a Parker-Lindberg hearing. The appellants further argue they had inadequate notice that a Parker-Lindberg hearing would be held and insufficient time to prepare for the hearing. Finally, Carr Construction and CNA contend the compensation judge's finding that State Farm was excluded from participation in settlement negotiations is unsupported by substantial evidence.

It is not necessary that all parties and all intervenors execute a stipulation for settlement. However, an intervenor who is excluded from participation and negotiations resulting in a final settlement is entitled to full reimbursement of its intervention interest. Brooks v. A.M.F., Inc., 278 N.W.2d 310, 315, 31 W.C.D. 521, 531 (Minn. 1979). Even if an intervenor participates in some or all of the settlement negotiations, the intervenor may still be deemed "effectively excluded" from the settlement where the settlement offer to the intervenor is not reasonable given all of the facts and circumstances of the case, including consideration of the terms of the settlement reached between the employee and the employer and insurer. Parker-Lindberg, 395 N.W.2d at 717-18, 39 W.C.D. at 131-34; see also Le v. Kurt Mfg. Co., 557 N.W.2d 202, 55 W.C.D. 650 (Minn. 1996).

Normally, whether an intervenor has been actually or effectively excluded from settlement negotiations is a question of fact to be resolved by the compensation judge after a hearing. Parker-Lindberg, 395 N.W.2d at 718, 39 W.C.D. at 134. Here, however, at the June 25, 1999 proceeding before Judge Dinner, the sole issue raised by State Farm was its request for a continuance of the hearing. State Farm did not, at that proceeding, assert that it had been excluded from settlement negotiations within the meaning of Brooks or Parker-Lindberg. Rather, counsel for State Farm stated his client had rejected CNA's settlement offer and acknowledged that State Farm was now obligated to proceed to trial and prove that Carr Construction and CNA were liable for the employee's injury. State Farm did no more than request additional time to prepare to litigate that issue.

Although the compensation judge could have convened a Parker-Lindberg hearing on June 25, 1999 on his own motion, see Stage v. Lion's Tap, Inc., 55 W.C.D. 208 (W.C.C.A. 1996), we have carefully reviewed the transcript of the proceedings on June 25, 1999 and cannot conclude the judge ever formally did so. (See T. 24, 45-52.) More importantly, it is not clear that State Farm, Carr Construction/CNA or the employee were aware that State Farm's exclusion from settlement negotiations would be an issue at the hearing. It is evident that State Farm did not contend it had been excluded and did not request the judge to conduct a Parker-Lindberg hearing. For these reasons, we vacate Finding No. 1. Having vacated the finding of exclusion, we need not address the sufficiency of the evidence to support this finding.

Carr Construction/CNA next assert the compensation judge erroneously dismissed the stipulation for settlement filed on July 26, 1999. The appellants contend the stipulation was

signed by attorneys for all of the then-parties in the case.[5] Thus, under Minn. Stat. § 176.521, subds. 2 and 2a, they argue, the settlement agreement must "be conclusively presumed to be reasonable, fair, and in conformity with this chapter," and the compensation judge was required to sign the award and file it. The appellants, accordingly, assert the compensation judge's dismissal of the stipulation is contrary to law and must be reversed. We disagree.

Minn. Stat. § 176.521 addresses an "agreement between an employee or an employee's dependent and the employer or insurer to settle any claim." Although styled by the parties as a "stipulation for settlement," in fact, the document does not settle any existing claim between any of the parties. Rather, the purported settlement merely states that the parties agree the case may be continued. Minn. Stat. § 176.341, subd. 4, governs continuances. Under the statute, only the chief administrative law judge or the compensation judge assigned to the hearing may grant continuances. Accordingly, the parties' agreement to continue the case was of no force and effect and the compensation judge properly dismissed the purported stipulation for settlement.

Finally, Carr Construction/CNA requests this court to remand the case to a different compensation judge at the Office of Administrative Hearings. They contend Judge Dinner is now privy to the proposed settlement terms and should not preside at a hearing on the merits. We take no position on this issue. The case is referred back to the Office of Administrative Hearings. When and if appropriate, the Chief Administrative Law Judge shall assign the case to a compensation judge for a hearing. At that time, any party is free to file an affidavit of prejudice or petition for reassignment with the Chief Administrative Law Judge. See Minn. Stat. § 176.312.

[5] Blue Cross/Blue Shield apparently refused to sign the stipulation.