

ALTON LARSON, Employee/Appellant, v. MUSKA ELEC. and CNA/TRANSCONTINENTAL INS. CO., Employer-Insurer, and SPECIAL COMP. FUND.

WORKERS' COMPENSATION COURT OF APPEALS
APRIL 27, 2000

No. [REDACTED SSN]

HEADNOTES

SETTLEMENTS - INTERPRETATION. Where the employee did not dispute the fact that he had been overpaid permanent total disability benefits subsequent to his award on settlement, and where overpayment of future permanent total benefits had apparently not been contemplated as a subject of compromise at the time of the settlement, as was overpayment of past temporary total benefits, language in the stipulation for settlement providing that the employer and insurer "waive their right to any overpayment of wage loss benefits" did not preclude the employer and insurer from recouping an overpayment of permanent total disability benefits incurred subsequent to the settlement by a temporary failure to take the statutory offset for Social Security benefits paid to the employee.

Affirmed.

Determined by Pederson, J., Rykken, J., and Johnson, J.
Compensation Judge: Ronald E. Erickson

OPINION

WILLIAM R. PEDERSON, Judge

The employee appeals from the compensation judge's legal determination that the employer and insurer are not precluded by the terms of a stipulation for settlement from recouping an overpayment of benefits by allowance of an offset against future compensation pursuant to Minn. Stat. § 176.179. We affirm.

BACKGROUND

On October 26, 1993, Alton Larson sustained a work-related injury to his low back while employed as an electrician with Muska Electric, for whom he had worked since 1966. On the date of his injury, Mr. Larson [the employee] was fifty-six years old and was earning a weekly wage of \$798.00. The employee subsequently sustained work-related injuries also to his left knee on May 17, 1995, to both wrists (carpal tunnel syndrome) on March 14, 1996, and to his right shoulder on May 12, 1996. Muska Electric [the employer] and its workers' compensation carrier accepted liability for all four injuries.

On February 25, 1997, the employee filed a claim petition alleging entitlement to temporary total disability benefits continuing from July 11, 1995, as well as to temporary partial

disability benefits between October 29, 1993, and April 6, 1994. In an answer filed May 27, 1997, the employer and insurer denied liability for the benefits claimed but affirmatively alleged that the employee had been permanently and totally disabled since July 1, 1996, and that the employer and insurer overpaid benefits based upon the employee's having reached the \$25,000 threshold set forth in Minn. Stat. § 176.101, subd. 4.¹ On February 9, 1998, the employee filed a second claim petition, claiming entitlement to permanent partial disability benefits related to his March 14, 1996, bilateral carpal tunnel syndrome.

On April 2, 1998, the parties filed a stipulation for settlement with the Office of Administrative Hearings agreeing that the employee was permanently and totally disabled since October 26, 1993, and that his benefits were to be based on the law in effect on that date. The employee contended at the time that, for purposes of the Social Security offset, the \$25,000 threshold was reached on October 1, 1997. The employer and insurer contended that the threshold was reached on August 13, 1996. The employee also contended that the employer and insurer had failed to properly adjust his benefits pursuant to Minn. Stat. § 176.645, resulting in an underpayment of wage loss benefits, and that he was entitled to permanent partial disability compensation for a 6% impairment related to his bilateral carpal tunnel injuries of March 14, 1996. It was the further position of the employer and insurer that the employee had been overpaid \$5,000 in temporary total disability benefits not reduced by the Social Security offset.

Pursuant to the April 2, 1998, stipulation, the parties compromised by agreeing that the \$25,000 threshold for permanent total disability benefits was reached on January 1, 1997. They further agreed that, in exchange for a settlement of the employee's 6% permanency claim related to the bilateral carpal tunnel syndrome, the employer and insurer "waive their right to any overpayment of wage loss benefits." They also agreed that upon issuance of an award on stipulation the employer and insurer would pay permanent total disability benefits, reduced by an offset for Social Security benefits. Attorney fees pursuant to statute were also to be withheld and

¹ Minn. Stat. § 176.104, subd. 4, provides in pertinent part:

Permanent total disability. For permanent total disability, as defined in subdivision 5, the compensation shall be 66-2/3 percent of the daily wage at the time of the injury, subject to a maximum weekly compensation equal to the maximum weekly compensation for a temporary total disability and a minimum weekly compensation equal to the minimum weekly compensation for a temporary total disability. This compensation shall be paid during the permanent total disability of the injured employee but after a total of \$25,000 of weekly compensation has been paid, the amount of the weekly compensation benefits being paid by the employer shall be reduced by the amount of any disability benefits being paid by any government disability benefit program if the disability benefits are occasioned by the same injury or injuries which give rise to payments under this subdivision.

paid from permanent total disability benefits payable to the employee after March 1, 1998. An award on the April 2, 1998, stipulation was issued on the same date.

On January 7, 1999, the insurer discovered that they had mistakenly failed to apply the Social Security offset to the employee's permanent total disability benefits since the date of the award on stipulation. This had resulted in an overpayment to the employee of \$4,517.78 during the period of April 3, 1998, through January 7, 1999. The claims adjuster accordingly proceeded to take a credit for the overpayment pursuant to Minn. Stat. § 176.179, reducing the employee's permanent total disability benefit payments by 20%.²

On March 16, 1999, the employee filed a claim petition objecting to the credit taken by the employer and insurer for the overpayment, contending that any right to credit for an overpayment was waived in the stipulation for settlement approved on April 2, 1998. The matter came on for a hearing before Compensation Judge Ronald E. Erickson on October 6, 1999. The limited issue for consideration was whether the prior stipulation for settlement precluded recoupment of an overpayment by the employer and insurer. In a findings and order dated November 4, 1999, the compensation judge concluded that the employer and insurer are not precluded by terms of the stipulation for settlement from recouping overpayments subsequent to the stipulation or overpayments not at issue when the stipulation was executed by the parties. The employee appeals.

DECISION

The narrow issue presented by the employee's appeal calls into question the language of the stipulation for settlement approved on April 2, 1998. Paragraph VII.A. provides in part as follows:

The Employer and Insurer waive their right to any overpayment of wage loss benefits in exchange for a settlement of the Employee's claims for permanent partial disability in the amount of 3% [each] to his right and left hands and wrists in the nature of carpal tunnel syndrome . . . It is further agreed and understood that said waiver also extinguishes any claim the Employee has to date for under payment of wage loss benefits and/or failure to properly adjust any wage loss benefits per Minn. Stat. § 176.645.

The employee contends that the "heart of this appeal" is the stipulation's apparently simple provision that "[t]he employer and insurer waive their right to any overpayment of wage loss benefits" (emphasis added) in exchange for settlement of the employee's claim for permanent

² At the time the insurer began taking the 20% overpayment credit for the Social Security offset mistake, it was also already withholding 20% in attorney fees pursuant to the award on stipulation. Therefore, beginning January 8, 1999, the employee's compensation rate of \$585.40 was reduced by \$148.22 for the proper Social Security offset, \$87.44 for the claimed overpayment, and \$69.95 in attorney fees, leaving a balance payable to the employee of \$279.79.

partial disability. The employee argues that the stipulation clearly indicates that the insurer cannot collect any overpayment, whether that overpayment “happens next year, ten years from now or twenty years from now.” He distinguishes the employer and insurer’s waiver of overpayment from that portion of the same paragraph wherein the employee compromised his claim for underpayment of wage loss benefits on a “to date” basis. We cannot agree.

Paragraph VII of the stipulation for settlement reflects a compromise agreement based on “the respective claims and contentions” of the parties. In interpreting the parties’ stipulation for settlement, it is necessary to read the provisions of Paragraph VII in conjunction with the claims and contentions of the parties set forth in Paragraph V. At the time the stipulation was entered into, the employer and insurer were asserting a specific claim for overpayment of temporary total disability compensation resulting from failure to apply the Social Security offset up to the date of the stipulation. As of April 2, 1998, this claim was alleged to be the sum of \$5,000. Except to the extent that the parties agreed that the employee was permanently and totally disabled and that the employer and insurer were entitled to apply the Social Security offset, the stipulation did not impact future claims of the parties that were not in issue. On April 2, 1998, neither party contemplated the overpayment issue presently before us. A stipulation for settlement covers only those claims and rights which are specifically mentioned in the agreement. Hanson v. Jer Her Builders, 366 N.W.2d 294, 37 W.C.D. 565 (Minn. 1985).

The employee does not dispute the fact that he was overpaid by the insurer during the period of April 3, 1998, through January 7, 1999. Nor does he dispute the amount of the overpayment claimed by the insurer. Because the overpayment in question relates to benefits paid subsequent to the award on stipulation and not previously in dispute or compromised, we conclude that the stipulation for settlement approved on April 2, 1998, does not preclude the employer and insurer from recouping the overpayment claimed. The decision of the compensation judge is affirmed.