

ELIZABETH PACKARD, Employee/Appellant, v. MINNEAPOLIS PARK & RECREATION BD., SELF-INSURED/BERKLEY ADM'RS., Employer, and MAYO FOUND. and ALLINA MED. GRP./ROSEVILLE, Intervenors, and SPECIAL COMP. FUND.

WORKERS' COMPENSATION COURT OF APPEALS
JANUARY 29, 2001

No. [REDACTED SSN]

HEADNOTES

SETTLEMENTS; PRACTICE & PROCEDURE. Where, at a motion hearing, the employee failed to submit the evidence necessary to establish the underlying factual elements of equitable estoppel, the compensation judge did not err in denying her motion to estop the employer from denying permanent total disability on grounds that the employee relied to her detriment on the employer's agreement to settle that claim. However, because estoppel involves questions of fact, and because this court would not hold, at this point, that estoppel could not be applied, as a matter of law, in the manner sought by the employee, the judge's order was modified to clarify that the employee could raise estoppel again at the hearing on the merits of her permanent total disability claim.

Affirmed as modified.

Determined by Wilson, J., Rykken, J., and Pederson, J.
Compensation Judge: Nancy Olson

OPINION

DEBRA A. WILSON, Judge

The employee appeals from the compensation judge's denial of her motion to enforce a settlement agreement. We affirm but modify the judge's decision to clarify that the employee may raise estoppel as an issue again at hearing on the merits of her permanent total disability claim.

BACKGROUND

The relevant underlying facts in this matter are relatively straightforward. On December 30, 1991, the employee was apparently exposed to a mixture of fumes when a heating system leaked at her workplace. According to the first report of injury, the employee sustained injury to her "Lungs and Nervous System" as a result of the exposure. The self-insured employer, Minneapolis Park & Recreation Board, apparently accepted liability for the injury and paid the employee certain benefits, including wage loss benefits and medical expenses.

By about August of 1992, the employee had apparently become totally unable to work due to psychological problems, which her doctors related to the December 1991 incident, and the employer subsequently paid the employee temporary total disability benefits for several

years, into late 1995. At that point, after the employer sought to discontinue benefits based on maximum medical improvement, the parties entered into settlement negotiations.

Letters between counsel suggest that the parties had agreed to stipulate to permanent total disability on the condition that the employee apply for other, nonworkers' compensation disability benefits. In a February 20, 1996, letter, Duane Johnson, then counsel for the employer, wrote to James Vander Linden, then counsel for the employee, as follows:

You will recall from our previous discussions that we are in agreement to stipulate to the permanent total disability of your client, Elizabeth Packard, regarding the afore-referenced matter. One of the conditions of our agreement is that Ms. Packard make application for disability benefits under the Minneapolis Employees' Retirement Fund (MERF) and any other disability benefits to which she may be entitled. To date, I have not received from you any information regarding her application and/or receipt of such benefits, and I ask that I receive such information before I draft and we enter into the stipulation. You will also recall from the notice of intention to discontinue workers' compensation benefits last issued in this matter that Ms. Packard's temporary total disability payments will cease on March 2, 1996.

Please furnish me with the requested documentation, and should you have any questions or comments please give me a call.

On February 23, 1996, Mr. Vander Linden replied, questioning Mr. Johnson's reference to an NOID "that would result in termination of temporary total disability benefits effective March 2, 1996," and asking Mr. Johnson to let him know immediately if he no longer agreed to permanent total disability. Mr. Vander Linden also reported that the employee was not eligible for social security disability benefits as she did not have the requisite number of employment quarters but that she would be applying for MERF disability benefits so that the employer "would be eligible for the appropriate offset." Less than two weeks later, on March 6, 1996, Mr. Vander Linden wrote again to Mr. Johnson, as follows:

I have discussed your client's proposal with Ms. Packard and she is agreeable to it. Specifically, it is my understanding that your client will not discontinue payment of temporary total disability benefits provided that we can provide verification that Ms. Packard has initiated the process of applying for disability benefits through MERF within fifteen days of today's date. Specifically, that day will be March 21, 1996. We will provide you with written verification that the application process has been initiated by that date. It is my understanding that you will be preparing a stipulation establishing permanent total disability benefits. If this letter does not accurately indicate our agreement, please let me know immediately.

By letter dated March 15, 1996, Mr. Vander Linden provided Mr. Johnson with a copy of the employee's application for MERF disability benefits, which had been submitted the previous day. In his letter, Mr. Vander Linden reiterated his understanding that Mr. Johnson was preparing the stipulation for permanent total disability. However, the employer refused to proceed with the settlement, and on June 25, 1996, filed another NOID, this time alleging that the employee had recovered from her fume exposure by January of 1992, denying liability for the employee's psychological condition, and asserting that all benefits after January 4, 1992, had been paid under a mistake of fact. At about the same time, or shortly thereafter, the employer retained Mark Kleinschmidt as new counsel. The employee objected to the proposed discontinuance, alleging entitlement to permanent total disability benefits from August 9, 1992, and continuing. The employee's psychological problems apparently delayed completion of discovery for some time, consequently delaying hearing on the matter. Finally, on January 11, 1999, the matter came on for a motion hearing, before Judge Nancy Olson, in the morning, as well as hearing on the merits of the discontinuance, before Judge Danny Kelly, in the afternoon.

The motion hearing and resulting order form the basis for this appeal. In her motion, the employee sought enforcement of the prior agreement of the parties, memorialized by correspondence of counsel, to stipulate to permanent total disability once the employee applied for MERF benefits. The employee argued that the employer should be bound by the representations and agreements of Mr. Johnson, its former counsel, either under contract theory or estoppel. In an order filed January 15, 1999, the compensation judge denied the employee the requested relief. In the meantime, the hearing before Judge Kelly was evidently stayed after several days of testimony, possibly as a result of the employee's appeal from Judge Olson's order.

Events occurring after the employee's appeal are procedurally complex. In pertinent part, the parties tentatively agreed at one point to settle both the employee's workers' compensation claim and a parallel civil action. However, due to questions concerning the employee's capacity to enter into settlement, this court referred the matter to district court for a hearing on whether the employee was in need of a conservator or guardian.¹ See Minn. Stat. § 176.092, subd. 1. Following a hearing on February 1, 2000, a district court judge found the employee in need of a conservator to "protect her estate and in particular to conclude her workers' compensation claim," and the judge appointed the employee's son, David Packard, as conservator, directing that letters of conservatorship be issued upon the filing of an oath by Mr. Packard. Subsequently, the employee and David Packard signed a letter discharging Mr. Vander Linden as counsel.² This court then wrote to the Packards and counsel for the employer, requesting clarification of the status of the employee's appeal from Judge Olson's January 1999 order. The employee responded by indicating that she was interested in pursuing the appeal and that she was in the process of obtaining a new attorney. However, to further complicate matters, Mr. Vander Linden notified the court that Mr. Packard had refused to sign the oath relative to the

¹ The employee had apparently already had a guardian ad litem appointed for purposes of the civil action.

² The letter also purported to discharge attorney John Rode, with whom Mr. Vander Linden had been associated for purposes of the employee's workers' compensation claim.

conservatorship and that he (Mr. Vander Linden) questioned whether the employee had sufficient capacity to terminate her legal services contract with him.

There is no evidence in the file that the employee ever formally retained new counsel,³ and we are concerned about the status of the employee's representation and/or her capacity with regard to this appeal. However, as matters stand, the employee's appeal from Judge Olson's order was timely and valid; briefs were filed in connection with that appeal by both counsel for the employer and by Mr. Vander Linden, who was the employee's authorized counsel of record at the time; no award on stipulation has been issued; and the employee has expressed the desire to proceed with her appeal. Therefore, in accordance with this court's order of December 1, 2000, we shall consider the matter on the merits.

STANDARD OF REVIEW

In reviewing cases 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, "[f]actfindings are clearly erroneous only if the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed." Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975). 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." Id.

"[A] decision which rests upon the application of a statute or rule to essentially undisputed facts generally involves a question of law which [the Workers' Compensation Court of Appeals] may consider de novo." Krovchuk v. Koch Oil Refinery, 48 W.C.D. 607, 608 (W.C.C.A. 1993).

DECISION

In her motion, the employee asked Judge Olson to enforce the parties' agreement to stipulate to permanent total disability once the employee applied for MERF disability benefits. Attached to the motion was correspondence between counsel, purportedly evidencing the agreement, as well as evidence that the employee fulfilled her part of the bargain by applying for MERF benefits. No testimony or additional evidence was submitted at the motion hearing. However, Mr. Vander Linden argued at that time that the employer should be estopped from denying permanent total disability because the employee had relied to her detriment on the

³ The employee apparently consulted with another attorney relative to the appeal, but there is no new retainer agreement or substitution of counsel notice in the file.

representations of Mr. Johnson, then counsel for the employer, by applying for MERF disability benefits when she had other, more economically advantageous alternatives with regard to the MERF funds. The compensation judge denied the employee's motion in all respects. On appeal, the employee again argues that the compensation judge erred in failing to apply equitable estoppel.

We note initially that, as recognized by the compensation judge, this court has held on several occasions that settlements are not enforceable absent the issuance of an award on stipulation. See, e.g., Alvord v. Hoffman Eng'g Co., 55 W.C.D. 47, 54-55 (W.C.C.A. 1996); Sokoloski v. Something Trucking, Inc., 40 W.C.D. 754, 756 (W.C.C.A. 1987); Saathoff v. Alex Rubbish Serv., 35 W.C.D. 670, 672 (W.C.C.A. 1982); Mentes v. 3M Co., 34 W.C.D. 648, 651 (W.C.C.A. 1982); Newstrand v. Anderson Fabrics, No. [REDACTED SSN] (W.C.C.A. July 8, 1999). However, we could find no such cases in which the requested relief was based on principles of estoppel. Moreover, estoppel has been applied in various other circumstances in workers' compensation matters,⁴ and we are unprepared at this time to hold that estoppel may never be used to hold an employer to the terms of a workers' compensation settlement agreement. However, under the particular circumstances presented here, we are nevertheless unpersuaded that the compensation judge erred in denying the employee's motion.

Estoppel is an equitable doctrine addressed to the discretion of the court and is intended to prevent a party from taking unconscionable advantage of his own wrong by asserting his strict legal rights. To establish a claim of estoppel, plaintiff must prove that defendant made representations or inducements, upon which plaintiff reasonably relied, and that plaintiff will be harmed if the claim of estoppel is not allowed.

Northern Petrochemical Co. v. United States Fire Ins. Co., 277 N.W.2d 408, 410 (Minn. 1979). "Before a court will examine the conduct of the party sought to be estopped, the seeker of the equitable remedy must demonstrate that he suffered some loss through his reasonable reliance on that conduct." Ridgewood Development Co. v. State, 294 N.W.2d 288, 292 (Minn. 1980). In the present case, counsel for the employee argued at the motion hearing that she had been harmed by applying for MERF benefits in reliance on the employer's agreement to settle, but no evidence to this effect, of any kind, was submitted to the judge. "A change of position for the worse as a basis for estoppel cannot be presumed and is a matter calling for proof." Saaf v. Duluth Police Pension Relief Ass'n., 59 N.W.2d 883, 888 (Minn. 1953). Given the complete absence of proof as to this element of estoppel, the judge had no alternative, in any event, but to deny the employee's motion. However, our conclusion to this effect does not finally dispose of the issue.

"Estoppel depends on the facts of each case and is ordinarily a fact question for the [factfinder] to decide." Northern Petrochemical, 277 N.W.2d at 410; see also Brenner v. Nordby, 306 N.W.2d 126, 127 (Minn. 1981). As such, application of estoppel is not ordinarily appropriate without an evidentiary hearing, at least where any factual disputes exist. Brenner, 306 N.W.2d at

⁴ See, e.g., Neuberger v. Hennepin County Workhouse, 340 N.W.2d 330, 36 W.C.D. 348 (Minn. 1983); Kahn v. State, Univ. of Minn., 289 N.W.2d 737, 32 W.C.D. 351 (Minn. 1980); see also Lofgren v. Pieper Farms, 540 N.W.2d 834, 53 W.C.D. 464 (Minn. 1995),

127 (“[s]ince the exact nature of the representations and the reasonableness of the reliance on them are disputed, the issue of estoppel should be presented to a factfinder”). See also Cohen v. Cowles Media Co., 479 N.W.2d 387, 391 (Minn. 1992), and United Elec. Corp. v. All Serv. Elec., Inc., 256 N.W.2d 92, 95 (Minn. 1977), for principles applicable to promissory estoppel.⁵ While we express no opinion here as to whether estoppel may be used in these circumstances to preclude the employer from denying permanent total disability, we believe that the employee should have the opportunity to establish the elements of equitable or promissory estoppel, by competent evidence, at the hearing on her entitlement to permanent total disability benefits. Therefore, while we affirm the judge’s denial of the employee’s motion, we modify her order to clarify that the employee may raise the estoppel issue again at that hearing.⁶

⁵ “Under promissory estoppel, a promise which is expected to induce definite action by the promisee, and does induce the action, is binding if injustice can be avoided only by enforcing the promise.” Cohen v. Cowles Media Co., 479 N.W.2d 387, 391 (Minn. 1992). See also Grouse v. Group Health Plan, Inc., 306 N.W.2d 114, 116 (Minn. 1981). Application of promissory estoppel involves both factual and legal determinations. Cohen, 479 N.W.2d at 391; Nicollet Restoration v. St. Paul, 533 N.W.2d 845, 848 (Minn. 1995).

⁶ The employee also argues on appeal that the compensation judge erred in failing to apply Minn. Stat. § 481.08, which provides that “[a]n attorney may bind a client, at any state of an action or proceeding, by agreement . . . made in writing and signed by such an attorney.” However, we decline to hold that a workers’ compensation attorney may automatically bind his client to a settlement, at least absent detrimental reliance by the other party or parties to the action.