

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

RICHARD KOLOGY)

)

VS.)

W.C.C. 04-02627

)

UNITED BUILDERS SUPPLY, INC.)

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the petitioner/employee's appeal from the denial of his Petition to Determine a Controversy in which he sought approval of a settlement pursuant to R.I.G.L. § 28-33-25.1. After careful review of the record and consideration of the arguments of the parties, we deny the employee's appeal.

Mr. Kology has had several petitions before this court involving the same alleged injury. W.C.C. No. 02-07839 was an original petition in which the employee alleged that he sustained a right inguinal hernia on June 29, 2001 or July 10, 2001. That matter was dismissed without prejudice by an order entered on April 11, 2003. On April 22, 2003, the employee filed another original petition, W.C.C. No. 03-02795, in which he alleged that he sustained a right inguinal hernia and an injury to his right hip on August 14, 2000. The parties submitted a proposed settlement of this claim under R.I.G.L. § 28-33-25.1 to the court. A hearing was held during which the employee testified. However, his testimony was halted when the trial judge raised a question regarding reporting the employee's resignation to the Unemployment Division of the

Department of Labor and Training and the effect on the employee's unemployment benefits. On September 9, 2003, the petition was dismissed without prejudice when the employee's attorney failed to appear for a scheduled hearing.

On October 15, 2003, the employee filed another original petition in which he alleged that he sustained a right inguinal hernia and an injury to his right hip on August 14, 2000 which he then aggravated on April 28, 2003. This petition, W.C.C. No. 03-06882, was dismissed without prejudice on January 26, 2004. A fourth original petition, W.C.C. No. 04-01394, was filed on February 25, 2004 containing the same allegations as W.C.C. No. 03-06882. This matter was dismissed with prejudice on April 12, 2004. The employee claimed a trial, but on June 15, 2004, a stipulation was entered withdrawing the claim for trial.

The employee then filed this Petition to Determine a Controversy, requesting that the court approve the settlement which had been previously proposed by the parties, but never approved. The attorney for the employee informed the court that the employee would not come to court to testify, but he submitted the transcript of the employee's testimony from the previous hearing in W.C.C. No. 03-02795. The trial judge rendered a bench decision in which he stated that he was not satisfied that the employee fully understood the effect of the proposed settlement and he had no indication whether it was in the employee's best interest to settle his case. Therefore, he denied the petition.

The employee has filed twelve (12) reasons of appeal, although most of them are repetitious. We will not be addressing any of them directly. After reviewing the statute in question, R.I.G.L. § 28-33-25.1, we find that the petition was not properly before the court and should be denied and dismissed on that basis rather than the findings made by the trial judge.

Section 28-33-25.1 of the Rhode Island General Laws states in pertinent part as follows:

“Notwithstanding the provisions of §§ 28-33-25 and 28-33-26, in cases where liability of the employer for payment of workers’ compensation benefits has not been finally established, the parties may submit a settlement proposal to the workers’ compensation court for approval.”

First, liability of the employer regarding a right inguinal hernia and right hip injury sustained on August 14, 2000 has been finally established. W.C.C. No. 04-01394 was dismissed with prejudice. The claim for trial from that order was withdrawn, leaving the dismissal as the final decree regarding the merits of that matter. Therefore, a petition for settlement under § 28-33-25.1 regarding an August 14, 2000 injury is not in order because the matter does not satisfy the requirements of that statute.

Secondly, the statute states that the settlement shall be submitted by “the parties,” not just one of the parties. The parties must agree that they both want to proceed with such a settlement and submit it as a joint proposal for approval by the court. In the present matter, the employer did not join in filing this petition. There was no agreement between the parties to seek approval of the settlement. Consequently, the matter does not satisfy the requirements of the statute and is not properly before the court.

We find that the trial judge was correct in denying and dismissing the employee’s petition, but for different reasons than those he cited. Therefore, although we affirm the result and deny the employee’s appeal, a new decree shall enter modifying the findings of fact to read as follows:

1. That the employee has failed to establish that he is entitled to any relief under R.I.G.L. § 28-33-25.1 where the liability of the employer for any injuries sustained on or about August 14, 2000 has been finally established.

2. That a petition for approval of the settlement of a disputed claim under R.I.G.L. § 28-33-25.1 must be filed with the agreement of both the employer and employee and this petition was filed solely by the employee.

It is, therefore, ordered:

1. That the employee's Petition to Determine a Controversy is denied and dismissed.

We have prepared and submit herewith a new decree in accordance with the decision.

The parties may appear on _____ at 10:00 A.M. to show cause, if any they have, why said decree shall not be entered.

Sowa and Salem, JJ. concur.

ENTER:

Olsson, J.

Sowa, J.

Salem, J.

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FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard before the Appellate Division upon the appeal of the petitioner/employee from a decree entered on August 16, 2004.

Upon consideration thereof, the appeal of the employee is denied and in accordance with the decision of the Appellate Division, the following findings of fact are made:

1. That the employee has failed to establish that he is entitled to any relief under R.I.G.L. § 28-33-25.1 where the liability of the employer for any injuries sustained on or about August 14, 2000 has been finally established.

2. That a petition for approval of the settlement of a disputed claim under R.I.G.L. § 28-33-25.1 must be filed with the agreement of both the employer and employee and this petition was filed solely by the employee.

It is, therefore, ordered:

1. That the employee's Petition to Determine a Controversy is denied and dismissed.

Entered as the final decree of this court this day of

BY ORDER:

ENTER:

Olsson, J.

Sowa, J.

Salem, J.

I hereby certify that copies were mailed to James A. Currier, Esq., and Bruce Balon, Esq.,

on
