THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Aisha Taylor, Commissioner

Susan S. Barden, Commissioner

Gene McCaskill. Commissioner

Appellate Case No. 2016-000178

Gerald Garner, Appellant,

v.

Ceres Marine Terminals, Inc., Employer,

and

Tokio Marine & Nichido Fire Ins. Co., Respondents.

INITIAL BRIEF OF THE RESPONDENTS

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I. Did the South Carolina Workers' Compensation Commission properly conclude that Garner's request for additional benefits was barred by the terms his June 7, 2011 settlement agreement?

Facts

The Appellant, Gerald Garner ("Garner"), injured his back in a work-related accident on February 23, 2009. On March 9, 2009, attorney S. Scott Bluestein filed a claim on Garner's behalf with the Worker's Compensation Commission. Attorney Bluestein represented Garner before the Commission until September 14, 2014, when he was formally relieved as counsel. During the pendency of Garner's workers' compensation claim, attorney Malcolm Crosland of the Steinberg Law Firm also represented Garner before the Commission.

As a result of the February 29, 2009 accident, the Respondent, Ceres Marine Terminals, paid Garner $38,747.91 in weekly benefits under the Longshore and Harbor Workers' Compensation Act through July 27, 2010. Ceres latter settled the Longshore claim with Garner for $49,000.00. This was in addition to medical benefits and a $249,000.00 settlement for Garner's concomitant claim under the South Carolina Workers' Compensation Act. It is this $249,000.00 state workers' compensation settlement that is the subject of Garner's present appeal.

On June 3, 2011, Garner, with the advice and consent of his attorney, S. Scott Bluestein, executed a Final Lump Sum Agreement and Release. Both Garner and Bluestein signed the agreement, which clearly and unequivocally states that "it is

stipulated and agreed between the parties that, upon filing with the Commission, this Agreement shall not be subject to review, modification or amendment by the Commission or the Courts of this State." The settlement agreement further states that

> "[Garner], hereby asserts that he recognizes that his consent to this settlement is a final determination and adjudication of all benefits under the South Carolina Workers' Compensation Act, growing out of or in any way connect with any injury and/or accident occurring on or about February 23, 2009."

The settlement agreement was filed with the Workers' Compensation Commission on June 7, 2011, at which time it was "adopted as an award of the South Carolina Workers' Compensation Commission finally ending the matter."

Also on June 3, 2011, Garner signed a Form 19, Compensation Receipt, acknowledging the receipt of the $249,000.00 settlement payment. There is no allegation that the Respondents failed to perform under the settlement agreement. In fact, the negotiated settlement drafts are part of the record in this case.

On July 29, 2014, more than 3 years after settling his workers' compensation claim, Garner filed a Form 50, requesting a hearing before the Worker's Compensation Commission alleging that the June 3, 2011 settlement agreement should be invalidated. Commissioner Melody James heard the matter on March 4, 2015 in Dorchester County, South Carolina, at which time both parties submitted documentary evidence.

By Order dated July 6, 2015, Commissioner James denied Garner's request for additional benefits under the South Carolina Workers' Compensation Act on the basis that such additional benefits were barred by the terms of the settlement agreement and

S.C. Code Reg. 67-801. According to Commissioner James, Garner failed to present any evidence that the settlement agreement was procured by fraud or that Garner was otherwise incapacitated at the time he executed the clincher agreement.

Garner next filed a Form 30 Request for Commission Review on July 29, 2015. A hearing was held before the South Carolina Workers' Compensation Commission's Appellate Panel on October 19, 2015. During oral argument, Garner argued that he was on medication for cirrhosis of the liver and hepatitis and lacked the mental capacity to enter into the settlement agreement he signed on June 3, 2011. He requested $100,000.00 per year until he reaches age 65. The Respondents argued that there was no evidence to support Garner's argument that the settlement agreement should be set aside and that Garner, having made only conclusory arguments without any supporting authority, effectively abandoned the issue on appeal. By its December 31, 2015 Decision and Order, the Appellate Panel affirmed the Hearing Commissioner James's Decision and Order and dismissed the Garner's claim with prejudice.

Argument

I. The South Carolina Workers' Compensation Commission properly concluded that Garner's request for additional benefits was barred by the terms his June 7, 2011 settlement agreement.

On June 3, 2011, Garner executed a Final Lump Sum Agreement and Release in exchange for payment of $249,000.00 by the Respondent. The agreement is signed by Garner and his attorney of record, S. Scott Bluestein. The Respondent made the required $249,000.00 payment to Garner on June 3, 2011, as evinced by the Form 19, compensation

receipt signed by Garner. The settlement checks were negotiated and Garner admits he received the settlement funds.

The Final Lump Sum Agreement and Release clearly and unequivocally states,

> "[Garner], hereby asserts that he recognizes that his consent to this settlement is a final determination and adjudication of all benefits under the South Carolina Workers' Compensation Act, growing out of or in any way connect with any injury and/or accident occurring on or about February 23, 2009."

The agreement further specifically states,

> "It is stipulated and agreed between the parties that, upon filing with the Commission, this Agreement shall not be subject to review, modification or amendment by the Commission or the Courts of this State."

Upon filing on June 7, 2011, the settlement agreement was "adopted as an award of the South Carolina Workers' Compensation Commission finally ending this matter upon the date of filing with the South Carolina Workers' Compensation Commission . . .." Clearly, by the plain terms of the settlement agreement, Garner is not entitled to any additional benefits under the Worker's Compensation Act and the agreement itself is not subject to review, modification, or amendment by the Commission or the Courts of this State.

Furthermore, pursuant to S.C. Code Reg. 67-801(E),

> "An Agreement and Final Release (clincher) relieves the employer and its representative from any further responsibility for payment of compensation or medical expenses, unless the Agreement and Final Release specifically provides otherwise. When the claimant signs the Agreement and Final

> Release and it is approved, the claimant does not have the right to ask for additional payments in the future even if the claimant's medical condition worsens, unless otherwise specifically provided in the document."

An official copy of the settlement is approved and certified by the Commission as binding pursuant to S.C. Code Ann. Reg. 67-801(F). Here, the Commission properly found that the June 3, 2011 settlement agreement between Garner and the Respondents complies with the provisions of S.C. Code Reg. 67-801, as well as the terms of S.C. Code Ann. § 42-9-390 (which requires that the agreement be filed with the Commission). Therefore, the settlement agreement is valid and binding under the terms and provisions of the South Carolina Workers' Compensation Act and, on its face, supports the Commission's conclusion that Garner is not entitled to any additional workers' compensation benefits for the February 23, 2009 accident.

In addition, the Commission properly concluded that the June 3, 2011 settlement agreement was neither procured by fraud, nor executed at a time of incapacity. The Commission correctly noted that in order to challenge the settlement agreement on the basis of incapacity requires proof by a preponderance of evidence hat Garner lacked sufficient mental capacity to reasonably understand the agreement. *In re* Thames, 344 S.C. 564, 544 S.E.2d 854 (Ct. App. 2001). The Commission further correctly applied the law regarding a claim or defense of fraud in the inducement, which requires, in addition to proof of the nine elements of fraud itself, additional proof that the alleged fraudfeasor made a false representation with the intent to deceive him and that he had a right to rely on this misrepresentation made to him. Moseley v. All Things Possible, Inc., 388 S.C. 31, 36, 694 S.E. 2d 43, 45 (Ct. App. 2010); *see also* Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.

2d 432 (Ct. App. 2003) (addressing the nine elements of fraud). In addressing these possible legal arguments for the vitiation on the settlement agreement, the Commission found that Garner simply did not present any competent evidence of fraud or incapacity.

While Garner argues that he was in distress, on medication, and "being coerced" at the time he executed the settlement documents, he provided no evidence to support these allegations. Garner's testimony at the March 4, 2015 hearing consisted only of uncorroborated, self-serving statements. In addition, Garner himself introduced into evidence a March 4, 2013 letter from his attorney of record, S. Scott Bluestein, regarding allegations Garner raised nearly two (2) years after the settlement agreement was executed. Attorney Bluestein addressed this allegation as follows:

> "...neither I or [sic] Mr. Crosland coerced you to sign the settlement documents. At no time did you tell me that you felt coerced or in distress at the time you signed the settlement documents. I do not recall seeing any doctor's records stating that you were in distress or unable to make a decision regarding the settlement of your case. If you will recall, I explained your settlement documents to you in great detail and read them to you. My paralegal also went over the settlement documents with you. Please keep in mind you had a friend that you trusted come in with you to discuss the settlement papers and you spoke with Kenny Riley, your union president, about the settlement as well."

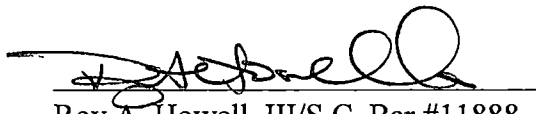
Attorney Bluestein's statements alone constitute substantial evidence in support of the Commission's conclusions that the June 3, 2011 settlement agreement was not procured

by fraud and that Garner was not under any incapacity at the time he executed the settlement agreement and endorsed the $249,000.00 settlement check. As noted by the Commission, "one cannot complain of fraud in the misrepresentation of the contents of a written instrument signed by him when the truth could have been ascertained by reading the instrument." PPG Indus., Inc. v. Orangeburg Pain & Decorating Ctr., Inc., 297 S.C. 176, 375 S.E.2d 331 (Ct. App. 1998).

Conclusion

Because the South Carolina Workers' Compensation Commission's findings of fact are supported by substantial evidence in the record and because the Commission further committed no legal error, the Respondents respectfully requests that the final Decision and Order of the South Carolina Workers' Compensation Commission be affirmed in accordance with the Administrative Procedures Act. *See* Sanders v. Wal-Mart Stores, Inc., 379 S.C. 554, 558, 666 S.E.2d 297, 299 (Ct. App. 2008) (holding that the appellate courts "can reverse or modify the Appellate Panel's decision only if the appellant's substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record") (citing Shealy v. Aiken County, 341 S.C. 448, 454, 535 S.E.2d 438, 442 (2000)); *see also* S.C. Code Ann. § 1-23-380(A)(5) (Supp.2007).

Respectfully submitted,



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