In the Matter of the Compensation of
RICK D. BEEHLER, Claimant
WCB Case No. 10-02996, 08-04707
SECOND ORDER ON RECONSIDERATION DECLINING TO APPROVE SETTLEMENT
Jodie Phillips Polich, Claimant Attorneys
Cummins Goodman et al, Defense Attorneys

Reviewing Panel: Members Weddell and Lowell.

On January 27, 2012, on reconsideration of our December 15, 2011 order, we declined to approve that portion of the parties' agreement that was designed to resolve their dispute pending before the Court of Appeals. In reaching our decision, we declined to consider e-mails between the parties' counsels and the Administrative Law Judge (ALJ)/Mediator, reasoning that they constituted confidential communications under OAR 438-019-0010. Asserting that our reasoning conflicts with several provisions of ORS Chapter 36, the self-insured employer contends that the e-mails should be considered and, based on those communications, we should approve the parties' agreement. Having received claimant's response, we proceed with our reconsideration.

After further consideration of this matter, it is unnecessary for us to conclusively resolve the question of whether the aforementioned e-mails represent "confidential communications." In other words, even if the e-mails could be considered, we would continue to decline to approve the parties' settlement. We reason as follows.

The employer's analysis springs from the following premise. That is, if the parties reach an agreement in principle regarding the terms of a settlement before receiving our approval of that settlement, then we must approve the settlement, even if we interpreted the settlement terms in a manner in which only one party registers disagreement. Asserting that the parties had a "meeting of the minds" following their mediation when they executed the settlement, the employer reasons that we should "enforce the actual terms of the agreement of the parties as all know them to have been."

Yet, settlements in the workers' compensation system are not bilateral agreements. Rather, they are, in effect, tripartite matters, which require Board or ALJ approval before the proposed agreement is legally recognized. *See* ORS 656.289(4); OAR 438-009-0010; OAR 438-009-0015(4), (5). Thus, no valid,

enforceable agreement existed until we approved our portion of the settlement on December 15. At that time, consistent with our statutory authority, we advised the parties of our interpretation of the settlement terms.

Thereafter, the employer sought reconsideration of our approval order, setting forth its interpretation of the settlement/stipulation. Had claimant concurred with the employer's interpretation of the settlement/stipulation terms, we would have rescinded our previous comments regarding our understanding of the agreement's meaning and approved it. However, claimant's responses to the employer's position did not express agreement with its interpretation of the settlement/stipulation. Lacking such conciliation from claimant, we are unable to conclude that, as of this date, which is when we are being asked to approve the agreement based on the employer's interpretation, there is currently a "meeting of the minds" regarding the meaning of the settlement/stipulation. Without a mutual understanding regarding the effect of such an agreement, we continue to decline to grant our approval.

Accordingly, as modified and supplemented, we republish our January 27 order. On further reconsideration, we continue to decline to approve the proposed settlement. Consequently, the employer's petition for judicial review of our previous order remains pending before the court. *See* ORS 656.298(9).

IT IS SO ORDERED.

Entered at Salem, Oregon on February 2, 2012