

In the Matter of the Compensation of
RICK D. BEEHLER, Claimant
WCB Case No. 10-02996, 08-04707
THIRD 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 February 8, 2012, we withdrew our February 2, 2012 Second Order on Reconsideration, which adhered to our January 27, 2012 order that declined to approve that portion of the parties' agreement that was designed to resolve their dispute pending before the Court of Appeals. We took this action to further consider the self-insured employer's arguments that our initial order approving the parties' settlement/stipulation (which was based on our interpretation of the parties' agreement) exceeded our statutory authority and that the parties have always had a "meeting of the minds" regarding the terms of their agreement. Having received claimant's response and the employer's reply, we have proceeded with our further consideration of this matter.

The employer does not agree with our previous explanations, basing its position on these fundamental precepts: (1) when granting our approval of a proposed settlement/stipulation, we lack the statutory authority to explain to the parties the manner in which we interpreted the agreement's terms; and (2) following that approval, when one party disagrees with our interpretation and the other party does not express agreement with that interpretation, we must approve the agreement based on the "disagreeing party's" position.

After further consideration of the employer's arguments, we remain of the opinion that, based on the express terms of the settlement/stipulation and considering its procedural context, the most reasonable interpretation of the agreement was that our initial compensability decision (including its accompanying attorney fee award) remained in effect. Likewise, we adhere to our previous reasoning that, in accordance with our statutory authority to review a proposed agreement, we may set forth our understanding of the agreement's consequences.

Nevertheless, in the interests of determining whether there presently is a "meeting of the minds" between the parties, we requested that claimant provide his written position regarding whether he currently agreed or disagreed with the

employer's interpretation of the stipulation/settlement terms. In response to that request, claimant acknowledges that there was initially a "meeting of the minds as to what the settlement was supposed to be." However, reasoning that the stipulation/settlement in combination with a Claim Disposition Agreement (CDA) "effectuated the agreed upon settlement terms," claimant explains that, in light of the approval of the CDA (by an ALJ-Mediator), a "meeting of the minds" does not presently exist regarding the meaning of the proposed stipulation/settlement.¹

As we have previously explained, a fundamental principle in determining whether we will approve a proposed agreement is whether the parties currently agree with the terms of that agreement. In this particular case, claimant has unequivocally declared that he disagrees with the employer's interpretation of the proposed stipulation/settlement. Although we offer no opinion regarding the reasoning expressed by claimant in support of his position, the indisputable fact remains that he expressly disagrees with the employer's interpretation of the agreement.²

¹ The employer also contends that, because the CDA fully released all of claimant's "non-medical service related" benefits (without specifically preserving his entitlement to the attorney fee award granted by our Order on Review), any "attorney fee-related" issue has been resolved. Yet, our review is confined to whether there is a mutual understanding of the parties concerning the meaning of the proposed stipulation/settlement. As such, the effect, if any, the CDA has on the pending stipulation/settlement has no bearing on the immediate question before us; *i.e.*, whether a "meeting of the minds" regarding the terms of the parties' agreement presently exists.

² Focusing on claimant's counsel's comment that "[t]here *is* a meeting of the minds as to what the settlement was supposed to be" (emphasis supplied), the employer contends that the use of the present tense represents an acknowledgment that the attorney fee award granted by our Order on Review has always been intended to be waived pursuant to their agreement. Reasoning that claimant has "now 'concurred'" that the terms of the agreement included the waiver of the aforementioned attorney fee award when the agreement was executed, the employer asserts that we should approve the stipulation/settlement without our previous footnote.

When viewed in isolation, the aforementioned comment from claimant's counsel lends support for the employer's contention that a mutual understanding between the parties currently exists. Nevertheless, such support is extinguished by the following subsequent statement from claimant's counsel: "A 'meeting of the minds' does NOT presently exist regarding the meaning of the proposed DCS." (Emphasis in original).

Thus, the employer is imploring us to approve an agreement based on the proposition that claimant initially concurred with the terms of the agreement, even though his counsel unequivocally states that he no longer takes such a position. Considering claimant's current position, we are unable to conclude that a "meeting of the minds" regarding the meaning of the terms of the proposed agreement presently exists. Under such circumstances, the agreement will not be approved.

In light of such circumstances, we are unable to conclude that a “meeting of the minds” presently exists.³ Consequently, we decline to approve the proposed agreement.⁴

Accordingly, as modified and supplemented, we republish our January 27 and February 2 orders. Therefore, the employer’s petition for judicial review of Order on Review remains pending before the court. *See* ORS 656.298(9).

IT IS SO ORDERED.

Entered at Salem, Oregon on March 6, 2012

In conclusion, implicit in our approval of proposed stipulations/settlements is the belief that our action will resolve the parties’ dispute and eliminate the need for further litigation before this forum. Here, based on the parties’ expressed positions, an approval of the agreement would, in all likelihood, inevitably lead to the opposite result. Considering such consequences, we choose to approve agreements when we are confident that the parties share a uniform understanding of their rights and obligations emanating from the agreement.

³ In reaching this conclusion, we offer the following comments regarding the CDA. In receiving ALJ-Mediator approval, the CDA was based on the existence of an accepted condition. Such a component is an essential component to a CDA, which means a written agreement under ORS 656.236(1) regarding a claimant’s release of rights, except for medical services, “in an accepted claim.” OAR 438-009-0001(1); *Lynda J. Thomas*, 45 Van Natta 894 (1993); *Frederick M. Peterson*, 43 Van Natta 1067 (1991). Here, the accepted condition mentioned in the CDA was the same condition proposed to be accepted pursuant to the stipulation/settlement that was presented for our approval. That condition concerned claimant’s injury claim, which had been found compensable in our appealed Order on Review. Yet, in the absence of our approval of that proposed agreement, the compensability of the denied initial claim remains pending before the Court of Appeals. Thus, in contravention of the aforementioned points and authorities, the approved CDA pertains to a denied, rather than an accepted, claim.

In addition, the CDA includes a reimbursement allocation schedule concerning the payment of outstanding medical bills. However, such a provision is a requirement for a Disputed Claim Settlement. ORS 656.313(4)(c),(d); OAR 438-009-0010(2)(g). Moreover, the release of a claimant’s rights to medical services by means of a CDA is expressly prohibited. ORS 656.236(1)(a).

⁴ This case vividly illustrates to parties and practitioners the importance of fully articulating their intentions when submitting agreements for Board approval. Such proposals should include express provisions describing the effect of their agreement on each portion of an appealed litigation order. Moreover, considering the complex nature of these multiple agreements (which also concerned issues potentially subject to several reviewing bodies), it would have been advisable for the parties to submit all agreements to the Board’s Salem office, rather than piecemeal by referring the CDA to the ALJ-Mediator and the stipulation/settlement to the Board. Had these principles been followed in the drafting of this proposed stipulation/settlement and the submission of all agreements through the Board’s Salem office, each agreement, once any necessary amendments and clarifications were made, would likely have received our unqualified approval of those portions of the agreement that were subject to our review authority.