
In the Matter of the Compensation of
CHARLES M. PARTLOW, Claimant
WCB Case No. 16-00773
ORDER ON REVIEW
Unrepresented Claimant
Maher & Tolleson LLC, Defense Attorneys

Reviewing Panel: Members Curey and Lanning.

Claimant, *pro se*,¹ requests review of Administrative Law Judge (ALJ) Marshall's order that declined to set aside claimant's previously approved Disputed Claim Settlement (DCS). On review, the issue is the validity of the DCS.

We adopt and affirm the ALJ's order with the following summary and supplementation.²

On February 3, 2015, claimant tripped and fell at work, injuring his right knee. On June 12, 2015, the self-insured employer accepted a right knee contusion, right knee sprain, and right knee tear of the anterolateral meniscus.

On December 9, 2015, claimant initiated a new/omitted medical condition claim for "chondromalacia of the lateral tibial plateau and partially ruptured popliteal cyst." On February 12, 2016, the employer accepted "[the] work injury combined with preexisting degenerative/arthritis conditions, including degenerative joint disease described as grade IV chondromalacia and associated popliteal cyst." Claimant requested a hearing for an alleged *de facto* denial of the new/omitted medical condition claim.

On March 29, 2016, Dr. Bowman, claimant's treating orthopedist, opined that claimant's "IV chondromalacia and popliteal cyst" were preexisting arthritic conditions that were not caused by his February 3, 2015 work injury. Dr. Bowman

¹ Because claimant is unrepresented, he may wish to consult the Ombudsman for Injured Workers. He may contact the Ombudsman, free of charge, at 1-800-927-1271, or write to:

OMBUDSMAN FOR INJURED WORKERS
DEPT OF CONSUMER & BUSINESS SERVICES
PO BOX 14480
SALEM, OR 97309-0405

² The summary is based on information in the hearing file.

also opined that the work injury combined with these preexisting conditions and was no longer the major cause of the need for treatment or disability of the combined condition. Dr. Bowman believed that claimant had recovered from the work injury and associated right knee conditions. He recommended a formal closing evaluation to assess permanent impairment. The evaluation was scheduled for April 18, 2016.

On April 12, 2016, the parties agreed to a Claim Disposition Agreement (CDA) for \$37,400, and a DCS (resolving a “combined condition” denial) for \$2,500.³ The employer’s counsel e-mailed the proposed settlement documents to claimant’s former counsel on April 14, 2016. Claimant signed the documents on April 18, 2016.

Claimant’s former counsel submitted the settlement documents to the ALJ/Board for approval on April 19, 2016. The ALJ approved the DCS on April 29, 2016. (*Id.*) The Board approved the CDA on April 29, 2016.

On May 5, 2015, the employer paid claimant the DCS and CDA proceeds. Claimant cashed/deposited the employer’s checks on May 11, 2016.

On May 25, 2015, claimant sought rescission of the DCS for the following reasons: (1) he had only two hours on April 18, 2016 to review the settlement; (2) he signed the settlement under “pressure” because his employment had been terminated and the lawyers said he would receive “nothing” if he did not sign the documents; (3) he was denied the opportunity to have a closing evaluation; and (4) the settlement did not provide for vocational rehabilitation or future medical care.

On May 26, 2016, the ALJ abated the order approving the DCS and gave the parties an opportunity to present their respective positions.

³ The DCS denied claimant’s “combined and current right knee and low back conditions on the basis that the accepted condition has fully resolved and any further disability or need for treatment is due to factors other than the work activities at Employer or at the [work] project.” The DCS stated that claimant requested a hearing to contest the denial. The DCS further recited claimant’s contentions (that his “current right knee condition and alleged consequential low back condition” were “directly attributable” to his employment “as a result of this claim, some other injury or the workplace exposure”), the employer’s contentions (that the accepted right knee injury had resolved, that claimant had suffered no further injury, disease, or consequential condition as a result of the claim, and that claimant’s current condition was not materially related to the work injury/exposure), and the parties’ desire to resolve the dispute pursuant to ORS 656.289(4).

On June 8, 2016, the employer's counsel objected to the abatement, asserting that claimant had not provided any reason that warranted setting aside the approved settlement. The employer's counsel stated that all settlement communications had been with claimant's counsel. The employer's counsel also noted that claimant accepted the settlement proceeds.

In response to the employer's counsel's assertions, claimant alleged that, on April 12, 2016, the employer had offered \$60,000 to settle the claim and, within a few hours, reduced the offer to \$40,000.

On July 28, 2016, the ALJ declined to set aside the DCS. Referring to the grounds for setting aside a DCS, the ALJ determined that claimant had not shown extreme circumstances that would justify such an extraordinary remedy. *See Mary Lou Claypool*, 34 Van Natta 943 (1982) (the grounds for setting aside a DCS include mistake, inadvertence, surprise, excusable neglect, fraud, misrepresentation, or other misconduct by the adverse party).

On review, claimant contends that the employer's denial of an "unclaimed" low back condition establishes misconduct warranting the rescission of the DCS. He also argues that the employer's counsel and his former counsel misrepresented the settlement by allowing him insufficient time to review the documents and threatening to withdraw the offer if he did not sign.

For the following reasons, we agree with the ALJ's determination that grounds for setting aside the previously approved DCS have not been established.

ORS 656.289(4) authorizes a DCS when there is a bona fide dispute as to compensability. It is well established that settlements are to be encouraged within the limits of the statute and, once approved, they should be set aside only if they clearly violate the statute. *Kasper v. SAIF*, 93 Or App 246, 250 (1988). We regard setting aside an approved settlement to be an extraordinary remedy to be granted sparingly in the most extreme circumstances. *See Dorothy J. Carnes*, 57 Van Natta 2003, 2004 (2005); *Pruitt Watson*, 45 Van Natta 1633 (1993). Absent a showing of extreme circumstances, we have declined to set aside a DCS. *See Carnes*, 57 Van Natta at 2004; *Floyd D. Gatchell*, 48 Van Natta 467 (1993).

Here, claimant argues that the DCS misrepresented the claim for a low back condition, contending that he had never made such a claim. Yet, the DCS itself made a claim for a low back condition as a "consequence" of the accepted knee injury. We conclude that the DCS was not invalid on this ground. *See Carnes*,

57 Van Natta at 2004 (declining to find a DCS invalid where a claim for bilateral carpal tunnel syndrome was made, denied, and a hearing request was filed within the DCS itself).

Claimant also asserts that he had insufficient time to consider the DCS and signed it under “pressure” that the offer would be withdrawn. First, it is standard practice for the settlement negotiation process to include offers and counteroffers, often under stressful circumstances and impending deadlines. This record does not establish extraordinary circumstances beyond those generally presented in the negotiations leading to parties’ settlements.

Moreover, although claimant signed the DCS on April 18, 2016, the ALJ did not approve the DCS until April 29, 2016. During that 11-day period, there is no indication that the ALJ was notified of any displeasure with (or reconsideration of) the agreement.

Finally, the settlement proceeds were paid on May 5, 2016, and claimant cashed/deposited the DCS check on May 11, 2016. During the 23-day period between claimant signing the DCS and cashing his checks, there is no indication that he had any dissatisfaction with the settlement. Instead, he did not seek disapproval until May 25, 2016, more than five weeks after he signed the document and nearly two weeks after he cashed/deposited the settlement checks. Claimant’s acceptance of the DCS monies (some 23 days after he signed the settlement) confirms that he had several weeks to reconsider his decision to accept the employer’s offer and still chose to proceed with the terms of the settlement.

We conclude that these circumstances do not rise to the level of “extraordinary” necessary to set aside the previously approved DCS.⁴ For the reasons previously expressed, no such grounds have been established.⁵ Consequently, we affirm the ALJ’s decision.

⁴ To the extent that claimant is raising allegations about his former attorney’s representation, those matters are not appropriate for this forum to resolve. *See Carnes*, 57 Van Natta at 2005 (the Board is not the appropriate forum for determining the adequacy of counsel). Instead, the Board’s authority pertains to whether there are grounds to set aside the DCS.

⁵ Asserting that the employer’s counsel has not responded to his reply brief, claimant contends that his request for disapproval of the DCS should be granted. Yet, in the absence of Board authorization, the employer is not permitted to respond to a claimant’s reply brief. OAR 438-011-0020(2). Furthermore, even if such a response was authorized, the absence of the employer’s response does not constitute a concession as to claimant’s request for relief (particularly when the employer’s respondent’s brief sought affirmation of the ALJ’s order). Instead, claimant must establish his right to the requested recovery based on his arguments and the reviewable record.

ORDER

The ALJ's order dated April 29, 2016, as reconsidered on July 28, 2016, is affirmed.

Entered at Salem, Oregon on January 5, 2017