Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: January 6, 2014

CLAIM NO. 200669845

GARDENS GLEN FARM PETITIONER

VS. **APPEAL FROM HON. JANE RICE WILLIAMS, ADMINISTRATIVE LAW JUDGE**

BETHANY (TAYLOR) BALDERAS
and HON. JANE RICE WILLIAMS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

RECHTER, Member. Gardens Glen Farm ("Gardens Glen") appeals from a June 25, 2013 Opinion, Award and Order and an August 12, 2013 Order on Reconsideration rendered by Hon. Jane Rice Williams, Administrative Law Judge ("ALJ"). Bethany Balderas ("Balderas") was injured in 2006 while employed as an exercise rider for Gardens Glen. She and

Gardens Glen ultimately settled the claim for a lump sum payment. In 2011, Balderas filed a motion to reopen, which was granted by the ALJ and is the subject of the present appeal. The ALJ determined Balderas had suffered a worsening of condition and awarded her increased permanent partial disability ("PPD") benefits. Gardens Glen appeals, arguing the ALJ erred in calculating the credit for payments made pursuant to the settlement agreement. We disagree and affirm.

On November 18, 2006, Balderas was riding a horse at Gardens Glen when it fell, rolling over on her and causing two broken vertebrae. She underwent fusion surgery and eventually returned to work without restrictions. She negotiated a lump sum settlement in the amount of $100,000.00 based upon a 29% impairment rating and a compromised return to work factor of 155.09543. On August 19, 2011, she filed a motion to reopen, alleging a worsening of condition.

Ultimately the ALJ determined Balderas had satisfied her burden of proof and established a worsening of condition. Relying on Balderas' treating physician's report, the ALJ determined her impairment rating had increased to 30% and she no longer has the capacity to perform her pre-injury work. Thus, the ALJ calculated her

current benefit using a 30% impairment rating and applying the three multiplier found at KRS 342.730(1)(c)1. Looking back to the time of the 2006 settlement, the ALJ then calculated what Balderas would have been awarded if her claim had been fully litigated. She concluded Balderas would have been entitled to PPD benefits based on a 29% impairment rating without application of any multiplier.

Finally, the ALJ calculated the credit due to Gardens Glen. She concluded Gardens Glen should be credited for the value of benefits of the original claim, rather than a dollar-for-dollar credit for the amount actually paid pursuant to the settlement agreement. Gardens Glen petitioned for reconsideration of the credit calculation, pointing out the value of benefits of the original claim, as determined by the ALJ upon reopening, is substantially less than the lump sum settlement paid in 2006. The ALJ declined to recalculate the credit.

Gardens Glen does not challenge the ALJ's factual findings. Rather, it continues to argue it is entitled to a dollar-for-dollar credit for the amount paid pursuant to the settlement agreement. We disagree and find no error in the ALJ's method of calculating Balderas' benefit or the credit to which Gardens Glen is entitled.

Balderas and Gardens Glen settled the initial claim arising out of the 2006 injury. Because a settled award is a product of compromise, the disability or permanent impairment rating that it states may or may not be accurate. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Therefore, the ALJ properly determined Balderas' actual disability and award at the time of settlement, without consideration of the terms agreed upon in the settlement agreement. *See* Newberg v. Davis, 841 S.W.2d 164 (Ky. 1992). This required a retrospective analysis of Balderas' disability and award in 2006, which would have entitled her to a weekly PPD benefit of $180.42.

The ALJ then determined Balderas, upon reopening, is entitled to $456.25 in weekly PPD benefits, based upon a 30% impairment rating and enhanced by the three multiplier. The ALJ then subtracted $180.42 from $456.25 to arrive at a net increase of $275.83 per week. Gardens Glen is incorrect in arguing the current benefit should be reduced by the weekly benefit amount used to calculate the lump sum settlement. On the contrary, Balderas is entitled to have her current benefit reduced by the actual award to which she was entitled at the time of settlement, rather than the amount paid pursuant to the agreement. Further, the ALJ

properly applied the credit beginning on the date the motion to reopen was filed.

As has been recognized by this Board and by Kentucky's appellate courts, there are certain risks inherent in every settlement agreement. One major risk is, upon reopening, an ALJ may find the claimant's actual impairment or disability at the time of settlement is substantially different than the compromised amount contained in the agreement. At times, this circumstance inures to the benefit of the employer. *See* Slater v. Dunn, 2007-SC-000202 (Ky. 2008)(affirming application of credit, upon reopening, amounting to more than the weekly benefit provided in prior settlement agreement and paid via lump sum). Here, it is the employer who must bear the burden of a "bad bargain". There was no error in the calculation of the credit to which Gardens Glen is entitled.

For the foregoing reasons, the June 25, 2013 Opinion, Award and Order and the August 12, 2013 Order on Reconsideration rendered by Hon. Jane Rice Williams are hereby **AFFIRMED**.

ALL CONCUR.

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