

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: July 24, 2020

CLAIM NO. 201995657

TOYOTETSU AMERICA, INC.

PETITIONER

VS.

APPEAL FROM HON. MONICA RICE-SMITH,
ADMINISTRATIVE LAW JUDGE

SHEILA ROYSDEN AND
HON. MONICA RICE-SMITH,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

ALVEY, Chairman. Toyotetsu America, Inc. (“Toyotetsu”) appeals from the Opinion, Award and Order rendered March 26, 2020 by Hon. Monica Rice-Smith, Administrative Law Judge (“ALJ”). The ALJ awarded Sheila Roysden (“Roysden”) temporary total disability (“TTD”) benefits, permanent partial disability (“PPD”) benefits, and medical benefits for a work-related left hand injury. Toyotetsu also appeals from the April 14, 2020 Oder overruling its petition for reconsideration.

On appeal, Toyotetsu argues the ALJ erred in failing to enforce a pre-litigation settlement agreement. We disagree and affirm.

Roysden filed a Form 101 alleging she injured her left hand due to cumulative trauma she sustained while working as a machine operator for Toyotetsu. Roysden treated with Dr. Margaret Napolitano from May 2018 through April 29, 2019. Dr. Napolitano performed a left first CMC joint arthroplasty with trapezium excision, and an FCR interposition in January 2019. Dr. Napolitano assessed a 7% impairment rating pursuant to the Fifth Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment (“AMA Guides”) on February 14, 2019. Dr. Napolitano found Roysden reached maximum medical improvement (“MMI”) on April 30, 2019, and released her to regular duty without restrictions.

Dr. Bruce Guberman examined Roysden on November 21, 2019. He diagnosed her as status post CMC arthroplasty of the left thumb with trapezium excision and FCR interposition. Dr. Guberman assessed an 8% impairment rating pursuant to the AMA Guides and opined she reached MMI on November 21, 2019. He permanently restricted Roysden from performing certain activities, and opined she does not retain the physical capacity to return to the type of work she performed at the time of her injury.

Roysden testified by deposition on December 6, 2019 and at the hearing held January 27, 2020. Roysden began working for Toyotetsu in 2015. She worked through a temporary service agency for ten months prior to Toyotetsu hiring her on a full-time basis. Roysden worked in the welding department operating a

welding machine. Roysden described the repetitive tasks required of her hands as a welding machine operator. Roysden began experiencing pain in her left hand approximately a year prior to February 2018. Roysden initially treated with Dr. Patrick Jenkins. He referred her to Dr. Napolitano, who performed surgery in January 2019. Dr. Napolitano released Roysden from her care, without restrictions, on April 29, 2019.

Roysden missed approximately eight weeks of work due to her surgery, during which time she received TTD benefits. Roysden subsequently returned to work for Toyotetsu, but requested a transfer from the welding department. Toyotetsu moved Roysden to the conveyance department as a forklift operator, where she continues to work. Roysden does not believe she can return to work as a welding machine operator.

At her deposition, Roysden testified as follows regarding the settlement negotiations that took place:

Q: You dealt with a person at Travelers Insurance Company who is handling your case, correct?

A: Uh-huh.

Q: And do you remember her name is Rhonda Russell?

A: Yes.

Q: At some point did you begin discussing with Ms. Russell about settling your Workers' Compensation claim?

A: She sent me an email, yes.

Q: And did she make an offer to you to settle your case?

A: Yes.

Q: And that offer that she made to you it was for a set amount of money paid over time, but that your medical benefits would remain open in case you needed treatment in the future. Does that sound right?

A: Yes.

Q: And there was some back and forth because initially you went back and said you wanted more money than she was offering you; is that right?

A: Yes, because I had to readjust everything in my work schedule and my life.

Q: And then you had another phone call with her discussing that and she indicated this is the most that she could offer you. And then after that, did you then send her an email saying you accept that offer she made?

A: Yes, I did because I did not understand everything.

Q: And did you get something in the mail from me with an agreement? Do you remember getting that in the mail?

A: I don't remember.

Q: But at that point after you had told her you accept, you then changed your mind?

Mr. Smith: Is that accurate?

A: Yes, I do.

Q: . . . this e-mail, which is dated 7/15 of 2019, and if you'll read this right here there that last thing and just indicate that's what you wrote to Ms. Russell at Travelers?

. . . .

A: Okay. "Sorry I missed your phone call. I received your voicemail explaining the impairment offer and I

understand how it was calculated. Thank you for getting back with me. I just wanted to let you know that I accept the original offer of 12 - - "I'm sorry, I can't see without my glasses.

Q: That's fine?

A: "With the open medical benefits. I will be off work this week, so if you need to contact me by phone or email, I should be available any time throughout the day."

Q: And is that the email that you sent to Ms. Russell?

A: Yes, it was.

Q: Okay. And after that e-mail, did she then tell you that she would be sending it to an attorney to send you a settlement agreement?

A: Yes, I did receive some paper - - yeah.

Counsel for Toyotetsu attached the email exchange as an exhibit to the deposition. On July 9, 2019, Ronda Russell ("Russell"), a "Claim Professional/ Worker's Compensation" from Traveler's emailed Roysden, stating, "Thank you for your email. I am out of the office on 7/10/19. I will attempt to reach you on 7/10/19 to discuss your concerns." On July 12, 2019, Russell entered what appears to be a note documenting a voicemail she left on Roysden's telephone. It states:

I called IW I reached VM. I indicated that I was responding to her 7/9/19 email with a counter offer. I explained to IW that if she is disputing the impairment rating that was provided to her, she could obtain her own rating to submit for consideration. I indicated she would be eligible for life time medical treatment as it relates to the 2/20/18 work injury. I indicated that paid rehab training she would need to contact the State of Kentucky to discuss eligibility.¹

¹ Presumably, "IW" stands for injured worker and "VM" stands for voicemail.

On July 15, 2019, Roysden sent the following email to Russell:

Sorry I missed your phone call. I received your voice mail explaining the impairment offer and understand how it was calculated. Thank you for getting back with me. I just wanted to let you know that I accept the original offer of 12057.05 with the open medical benefit.

...

At the hearing, Roysden testified as follows regarding the settlement negotiations:

Q: Okay. Now, at some point in time, you received a telephone call from one of the people at Travelers. Is that correct?

A: Yes.

Q: And, that individual proposed a settlement to you?

A: Yes.

Q: When you received a Settlement Agreement, were you able to read that Settlement Agreement and understand all of the legal ramifications in that Settlement Agreement?

A: I didn't actually understand it all the way as I was reading it.

Q: Did you, in your mind, make an ironclad settlement agreement with those folks or did you just tell them to send the papers and you would review them and see if you could sign them? How did that go?

A: I told them - - I told them, okay, I understood on the phone and then, after I got the papers and I was trying to read over it, I - I felt like I didn't really understand it, so that's when I decided to contact legal service.

Q: Had that Settlement Agreement been fully read to you over the phone before you agreed to it or was there just an offer of money?

A: She offered the money and she said that – I remember she said that it – she was trying to tell me how they multiply the seven percent and I think she left a voicemail on there and so I didn't really ask any questions because I didn't actually talk to her.

Q: Okay. All right. Anyway, you did not understand it fully and completely when you got it and started reading it, correct?

A: Correct.

On cross-examination, Roysden additionally testified as follows:

Q: Ms. Roysden, going back to the settlement negotiations you had with Travelers, the person you talked to was Rhonda Russell, right?

A: I believe that's her name.

Q: And, Ms. Russell, you had phone conversations with her and you had email exchanges with her, correct?

A: Yes.

Q: And, Ms. Russell made you a settlement offer, which was for an amount of money you would receive weekly for a set number of weeks. Is that correct?

A: Yes, on the papers that I read.

Q: And, when she made that offer to you, you went back to her with a number of questions about that, did you not?

A: I asked her some questions, but I didn't know the settlement was, like, a weekly thing until they actually mailed that out.

Q: Well, you had asked her about whether her medicals would be open . . .

A: Yes.

Q: . . . for the future and she cleared that – cleared that up for you, correct?

A: Yes.

Q: You asked her about the seven percent impairment rating and whether you could get another impairment rating for her to consider. Do you remember asking her that?

A: She told me that if I wanted a different impairment rating that I would have to go find my own doctor is what she said.

Q: And, then when she made that initial offer to her – to you, you actually came back with a counter offer and you asked for an additional fifteen thousand dollars (\$15,000.00) over what she had offered. Is that correct?

A: I had – yeah, I had wrote her an email.

Q: Then, after that email where you had asked about the extra fifteen thousand dollars (\$15,000.00) and about medicals, you got a voicemail from her and she answered your questions that you had asked. Is that correct?

A: Yeah, she explained things that I thought I understood, but, after I received her paper, I didn't – when I actually was reading it, I didn't really understand it.

Q: Then, after you got that voicemail from her, you wrote an email back and you indicated in there that you understood how it was calculated, correct?

A: I believe I – I think I did.

Q: Then, you told her that you wanted to accept the offer for the amount of money that she made, correct?

A: At that time, yes.

Q: That was in the email that we attached to your deposition. Do you remember that?

A: I think so, but I didn't sign anything.

Q: Okay. Then, it was only after that when you received the Settlement Agreement from me that you had the paperwork in from of you and you did not return that to me, correct?

A: Correct.

The ALJ determined there was no enforceable settlement agreement based upon Roysden's credible testimony. The ALJ found there was no meeting of the minds, noting the settlement negotiations took place over the phone and by email. The ALJ noted Roysden testified she did not understand the settlement agreement once she received and read it. The ALJ also noted Roysden testified she did not understand the settlement was for weekly payments.

The ALJ then determined Roysden sustained a work-related injury on February 20, 2018, warranting an 8% impairment rating assessed by Dr. Guberman. The ALJ also found Roysden does not retain the physical capacity to return to her prior work and is entitled to the three multiplier. The ALJ awarded Roysden TTD benefits, PPD benefits, and medical benefits for her left hand work injury.

Toyotetsu filed a petition for reconsideration asserting the same argument it now makes on appeal. It argued the ALJ erred as a matter of law in finding the parties' pre-litigation settlement agreement was not enforceable, but did not request additional findings of fact. The ALJ overruled Toyotetsu's petition, noting she found credible Roysden's testimony that she did not fully understand the terms of the written settlement agreement when she received it. Further, the ALJ noted Roysden testified she did not understand the settlement was for monthly

payments and she found no indication in the email correspondence stating the settlement indicated periodic payments.

On appeal, Toyotetsu argues the parties entered into a binding pre-litigation settlement and the ALJ erred in failing to enforce it. Toyotetsu notes a settlement agreement is enforceable even in the absence of a final settlement agreement provided there is written documentation indicating a meeting of the minds with respect to all material elements of the agreement. Hudson v. Cave Hill Cemetery, 311 S.W.3d 267, 271 (Ky. 2011). It argues correspondence between parties constitutes a sufficient memorandum of an enforceable settlement agreement, so long as the terms of the agreement are complete. Coalfield Telephone Co. v. Thompson, 113 S.W.3d 178, 179 (Ky. 2003).

Toyotetsu asserts the evidence establishes Roysden was offered a settlement containing all material terms (a weekly PPD benefit of \$28.37 to be paid for 425 weeks for a total of \$12,057.25 with all rights and benefits remaining open). It asserts the offer was unambiguous and contained all material terms and conditions. Toyotetsu argues Roysden accepted and fully understood the offer as evidenced by the July 15, 2019 email. It argues Roysden's deposition testimony demonstrates she was aware the settlement was weekly benefits when she answered in the affirmative to the question, "And that offer that she made to you it was for a set amount of money paid over time, that that you medical benefits would remain open . . . ?" Toyotetsu maintains Roysden's post-litigation excuse that she did not understand the settlement is "wholly unpersuasive and contrary to the evidentiary record."

KRS 342.265, states in pertinent part:

(1) If the employee and employer and special fund or any of them reach an agreement conforming to the provisions of this chapter in regard to compensation, a memorandum of the agreement signed by the parties or their representatives shall be filed with the commissioner, and, **if approved** by an administrative law judge, shall be enforceable pursuant to KRS 342.305. (Emphasis added).

KRS 342.265 requires a settlement agreement to be approved by an ALJ, otherwise it is not enforceable. Greene v. Paschall Truck Lines, 239 S.W.3d 94 (Ky. App. 2007). To hold otherwise would render KRS 342.265 meaningless, and defeat its purpose of providing an ALJ the opportunity to protect the interest of the employee. Skaggs v. Wood Mosaic Corp., 428 S.W.2d 617 (Ky. 1968). The obvious policy and purpose of KRS 342.265 is to discourage the making of settlements except under the protective supervision of the ALJ. Kendrick v. Bailey Vault Co., Inc., 944 S.W.2d 147 (Ky. App. 1997). In Commercial Drywall v. Wells, 680 S.W.2d 299 (Ky. App. 1993), the Court of Appeals stated an ALJ “may look behind the settlement when an agreement appears not to be in the interest of the worker, provided there is cause to do so.” Accordingly, an ALJ enjoys the authority to reject even signed agreements between the parties.

Toyotetsu is correct in asserting correspondence, which has not been reduced to a final written form, can sufficiently memorialize a settlement agreement. In Coalfield Telephone Co. v. Thompson, 113 S.W.3d at 181, the Court found, “letters from representatives of both parties clearly indicated the terms to which they agreed, and there is no assertion that the terms were incomplete. Under those circumstances, the Board and the Court of Appeals correctly determined that the

ALJ should have addressed the substance of the agreement rather than its form.” In Hudson v. Cave Hill Cemetery, 331 S.W.3d at 271, the Court noted neither KRS 342.265 nor Coalfield Telephone Co. v. Thompson, supra, “should be construed as encouraging hastily-drafted and incomplete settlement agreements.” The Court found, “the agreement was incomplete under the circumstances because the parties clearly had not come to terms concerning the portion of the lump sum to be allocated to the Medicare Set-Aside Account.” Id. See also Skaggs v. Wood Mosaic Corp., supra, (holding KRS 342.265 does not require a settlement agreement to be in writing if there is written evidence outlining the terms of the agreement).

The record before us contains substantial evidence supporting the ALJ’s determination there was no meeting of the minds in the settlement negotiations between Roysden and Russell. The determination as to whether a meeting of the minds has occurred is a question of fact. As such, this Board may only disturb the ALJ’s findings if they are unsupported by substantial evidence. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). In this instance, the ALJ primarily based her decision upon Roysden’s testimony.

The email exchange indicates Roysden proposed an undisclosed counteroffer to Russell. Russell left Roysden a voicemail explaining to her that if she disputed the impairment rating, presumably assessed by Dr. Napolitano, she could obtain her own impairment rating. In the voicemail, Russell also indicated Roysden would be eligible for future medical benefits for treatment of her work injury. In her email response, Roysden wrote she understood how the impairment offer was

calculated, and that “I accept the original offer of 12057.05 with the open medical benefit.”

At her deposition, Roysden testified she accepted the offer reflected in the email correspondence because “she did not understand everything.” Roysden indicated she did not ask any questions since Russell had explained how the impairment offer was calculated in a voicemail. When she received the formal settlement agreement (which was not filed into the record), Roysden testified she did not “actually understand it all the way as I was reading it,” refused to sign it, and retained legal counsel. Roysden further asserted she did not know “the settlement was, like, a weekly thing until they actually mailed” her the settlement agreement reflecting weekly payments.

Based upon the above evidence, the ALJ could therefore reasonably conclude there was no meeting of the minds. KRS 342.285 grants the ALJ, as fact-finder, the sole discretion to determine the quality of the evidence and draw reasonable conclusions therefrom.

The ALJ noted the settlement negotiations took place over the phone and by email. She also noted Roysden testified she realized she did not understand the settlement once she received and read it. She specifically indicated she did not understand the settlement was for weekly payments. In the Order on petition for reconsideration, the ALJ found there was no indication in the email correspondences indicating the settlement was for periodic payments. Indeed, our review of the email correspondence confirms the method of payment of the agreed settlement amount is ambiguous, at best. Russell does not specify how the settlement amount was to be

distributed in the correspondence. Roysden acceptance of “the original offer of 12057.05 with the open medical benefit” does not support the assertion the parties agreed the amount was to be paid weekly. Whether a settlement amount is to be paid in lump sum or weekly is a material element, and absence of language specifying the method of payment supports a finding of no meeting of the minds and/or an incomplete agreement. The record does not support Toyotetsu’s assertion Roysden was offered a settlement containing all material terms, i.e., “a weekly PPD benefit of \$28.37 to be paid for 425 weeks for a total of \$12,057.25 with all rights and benefits to remain open.” Under the circumstances, we conclude the ALJ acted within her authority in declining to enforce the proposed agreement.

Accordingly, the March 26, 2020 Opinion, Award and Order and the April 14, 2020 Oder on petition for reconsideration rendered by Hon. Monica Rice-Smith, Administrative Law Judge, are hereby **AFFIRMED**.

STIVERS, MEMBER, CONCURS.

BORDERS, MEMBER, NOT SITTING.

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