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Gallagher Sharp Shop Talk: Workers' Compensation

QUESTION: Must the Industrial Commission be aware of the terms of a confidential settlement in order to approve it? Is the submission of a court entry reflecting that a settlement has been reached an appropriate substitute for a settlement agreement?

Settlements of Ohio workers' compensation claims require notice to and approval of the Industrial Commission. Under R.C. 4123.65(D), the Administrator (for state-fund settlements) or self-insured employer (for self-insured settlements) must send a copy of any final settlement agreement to the Industrial Commission, which shall assign a Staff Hearing Officer to the matter. That hearing officer shall determine, within a period of thirty (30) days, whether or not the settlement is a "gross miscarriage of justice," and may disapprove settlements which are deemed unfair. Recently, the Eleventh Appellate District considered a confidential settlement agreement reached with a self-insured employer which was never submitted to the Industrial Commission, and whether that failure meant that the settlement was null and void.

Burke v. Wal-Mart Stores, Inc., 2017-Ohio-110, involved a claimant who was injured in the course of and arising from his employment in 2007. In 2012, the claimant sought to have the claim additionally allowed for "substantial aggravation of pre-existing major depressive disorder." This request was allowed administratively, prompting the self-insured employer to file an appeal to the common pleas court. While the case was pending, the parties orally agreed to a settlement at a conference in 2014, but the agreement was never reduced to writing. (The employer later contended the settlement was fraudulently induced, citing anonymous emails and photos.) A motion to enforce the settlement was denied because of a lack of a written agreement. In November, 2014, the parties reached a second settlement, this one reduced to writing but also deemed confidential. At the time the attorneys and judge executed an agreed judgment entry which reflected the denial of the contested condition. Rather than file the confidential agreement with the Industrial Commission, the employer filed the entry accompanied by a letter. The claimant's attorney was copied and did not object. The Industrial Commission accepted the entry in lieu of the settlement agreement and terminated compensation. In November, 2015, the claimant filed a Civ. R. 60(B) motion seeking to set the confidential agreement aside, arguing that the failure to file the settlement agreement itself violated R.C. 4123.65, and therefore the settlement was void. The trial court denied the motion, prompting an appeal by the claimant to the Eleventh Appellate District.

The Court of Appeals agreed with the trial court and affirmed the settlement, finding that the failure to file the actual settlement agreement was not fatal. The court noted the rules requiring Industrial Commission approval and the two different time lines for withdrawing consent. Self-insured employees may withdraw consent within 30 days from the date of execution of the agreement, while state-fund employees and employers have 30 days from the date of approval by the BWC. For self-insured employees, the approval process is merely a review to protect the parties from unfair agreements, while the review of state-fund settlements are required to protect the sanctity of the fund itself. Therefore, knowledge of the specific terms of a settlement

between a self-insured employer and employee was not necessary, because the parties were represented by counsel, had executed the agreed entry, and the 30 day period to withdraw had long expired. In a lengthy dissent, Judge Grendell argued that the failure to comply with clear requirements of R.C. 4123.65 should have rendered the settlement null and void as a matter of law.

Burke constitutes a very loose reading of R.C. 4123.65, to the point where it disregards a clear legislative requirement that settlement agreements be filed with the Industrial Commission for approval. Because the agreement in *Burke* was confidential, filing may not have been an option, but the Court determined that the agreed entry was sufficient to effectuate a dismissal of an appeal and denial of the requested condition.

If you would like to submit a question to Shop Talk, or would like to discuss this or any other workers' compensation issues, please feel free to contact me.

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