

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
ORLANDO DISTRICT OFFICE

Thomas McLean,)	
)	
Employee/Claimant,)	
)	
vs.)	OJCC Case No. 96-000435TWS
)	
McLane Grocery Distributors,)	
)	Accident date: 1/5/1996
Employer,)	
)	
and)	
)	Judge: Thomas W. Sculco
Sedgwick CMS,)	
)	
Carrier/Servicing Agent.)	
)	

AMENDED ORDER ON E/C's MOTION TO ENFORCE SETTLEMENT

This cause was heard on 9/3/09 regarding the E/C's 8/21/09 Motion to Enforce Settlement. After considering the evidence and argument presented, this court determined that the parties reached a valid and enforceable settlement, in an order dated 9/17/09. On 9/23/09 claimant, through new counsel Roland Tan, Esq., filed a motion for rehearing and motion to vacate the 9/17/09 order. In response to claimant's motion for rehearing, this court vacated the 9/17/09 order to allow consideration of claimant's arguments on rehearing, which are addressed in this amended order.

Introduced into evidence at the hearing were the following:

Exhibit 1 - Motion to Enforce Settlement, with attachments.

In addition, the claimant, Thomas McLean, testified live at the hearing.

After considering the evidence and argument presented, including claimant's motion for rehearing, this court makes the following findings of fact and conclusions of law:

On 5/13/09, claimant signed a letter from David Mallen, Esq., his former counsel, that provided:

Dear Mr. McLean:

The defense requests we confirm with your signature that you do agree to the settlement. The settlement is a complete settlement and release and resignation for \$62,500.00 to you, plus attorney fees and costs to my office totaling \$7,500. The total settlement adds up to [is] \$70,000.00. You have advised that you wish to proceed with this settlement. Thank you and I remain.

Very truly yours

David E. Mallen

Claimant testified at the hearing that he did sign the above letter, and that he understood he was settling his case.

Claimant argues on rehearing that the 5/13/09 letter does not establish the E/C's assent to the settlement. First, this

argument was not raised at the hearing on 9/3/09, and therefore cannot be raised for the first time on rehearing, or on appeal. See Rule 60Q-6.122(2) (providing reasons for rehearing are limited to challenging rulings outside the scope of the issues presented, or to seek clarification in matters of fact or law that the judge may have overlooked or misapprehended). Moreover, contrary to claimant's argument, this letter, along with claimant's testimony, does establish a settlement between the parties in this case. Specifically, it can reasonably be inferred from the first sentence of the 5/13/09 letter that the E/C assented to the settlement.

Claimant also argues on rehearing that documents sent by the E/C to claimant after the settlement was reached "operated as a written amendment proposed by the E/C to modify the prior agreement, and claimant accepted the new terms by electing to void the agreement as per paragraph 11 contained therein."

Again, this argument was not raised at the hearing on 9/3/09, and therefore cannot be raised for the first time on rehearing. See Rule 60Q-6.122(2). Even if the argument had not been waived, it is without merit in any event. If the documents sent by the E/C to claimant after the settlement are considered a new offer, the evidence is clear that claimant did not accept this new offer. Rather, claimant refused to sign the E/C's settlement documents. To have a valid contract, it is well settled that the acceptance must mirror the offer on *all* material

terms. Claimant cannot accept *only* paragraph 11 of the E/C's purported "new" offer, which addresses the effective date of the agreement. For there to be a valid "new" agreement, which would supersede the parties' prior agreement, claimant must accept *all* the terms set forth by the E/C. As the evidence establishes that claimant did not sign the E/C's paperwork and did not otherwise assent to all the terms in that paperwork, there is no new agreement that supersedes the prior agreement reflected in the 5/13/09 letter.

In sum, based on the 5/13/09 letter, signed and acknowledged by claimant, and on the claimant's testimony at the hearing, I find that the parties entered into a valid and binding settlement agreement of claimant's 1/6/96 workers' compensation claim for \$62,500.00 to claimant, and \$7,500.00 in attorneys' fees and costs to David Mallen, Esq..

WHEREFORE, it is ORDERED and ADJUDGED that:

1. The parties entered into a valid and binding settlement agreement as follows: The E/C agrees to pay and claimant agrees to accept \$62,500.00 to claimant, and \$7,500.00 in attorneys' fees and costs to David Mallen, Esq. as a complete settlement and release of claimant's 1/6/96 workers' compensation claim, with claimant resigning his employment with the employer.
2. The E/C is ordered to file a motion for approval of attorneys' fees and child support allocation, along with supporting documentation, within ten (10) days of the date of this order. Claimant's signature is not required on the motion.

3. Pursuant to section 440.20(11)(c), Florida Statutes, once this court enters an order approving the attorneys' fees and child support allocation related to this settlement, the E/C must make payment of the above amounts, \$62,500.00 to claimant, and \$7,500.00 to David Mallen, Esq., within 14 days after the date this court mails the order approving the attorneys' fees. Jurisdiction is reserved to determine what portion, if any, of the \$7,500.00 in attorneys' fees and costs is owed to Roland Tan, Esq..

DONE AND ORDERED this 10th day of November, 2009, in Orlando, Orange County, Florida.

Thomas W. Sculco

Thomas W. Sculco
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
Orlando District Office
400 West Robinson Street, Suite 608-North
Orlando, Florida 32801-1701
(407)245-0844
www.jcc.state.fl.us

Thomas McLean
Post Office Box 451424
Kissimmee, Florida 34745

Sedgwick CMS
Post Office Box 14434
Lexington, Kentucky 40512

Roland P. Tan, Esquire

Michael S. Waranch, Esquire

David Mallen, Esquire

Digitally signed by
Marla Miller
Marla Miller
Date: 2009.11.10
16:01:23 -05'00'

Assistant to Judge Sculco