

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NANCY MILBRANDT,

Claimant,

vs.

R.R. DONNELLY,

Employer,

and

Ace American Insurance,

Insurance Carrier,
Defendants.

File No. 20009756.01

ARBITRATION DECISION

Head Notes: 2300, 2907

STATEMENT OF THE CASE

Nancy Milbrandt, claimant, filed a petition in arbitration seeking workers' compensation benefits from R.R. Donnelly, employer and Ace American Insurance, insurance carrier, as defendants. Hearing was held on April 12, 2022. This case was scheduled to be an in-person hearing occurring in Des Moines. However, due to the declaration of a pandemic in Iowa, the Iowa Workers' Compensation Commissioner ordered all hearings to occur via Internet-based video. Accordingly, this case proceeded to a live video hearing via CourtCall with all parties and the court reporter appearing remotely.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

Nancy Milbrandt was the only witness to testify live at trial. The evidentiary record also includes claimant's exhibits 1-8, and defendants' exhibits A-E. All exhibits were received without objection. The evidentiary record closed at the conclusion of the arbitration hearing.

The parties submitted post-hearing briefs on May 20, 2022, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following issues for resolution:

1. Whether this agency has jurisdiction over this case in light of claimant's settlement with the Second Injury Fund of Iowa.
2. Whether claimant sustained an injury, which arose out of and in the course of employment, on November 26, 2019.
3. Whether the alleged injury is a cause of permanent disability; and if so, the nature and extent of entitlement.
4. The appropriate commencement date for any permanency benefits.
5. Whether claimant is entitled to temporary benefits.
6. Whether defendants are responsible for past medical expenses pursuant to Iowa Code section 85.27.
7. Whether defendants are entitled to any credits against any award.
8. Whether claimant is entitled to mileage for the independent medical examination pursuant to Iowa Code section 85.39.
9. Assessment of costs.

FINDINGS OF FACT

The undersigned, having considered all the evidence and testimony in the record, finds:

On November 19, 2020, claimant, Ms. Nancy Milbrandt, filed a petition seeking workers' compensation benefits from R.R. Donnelly, employer, and Ace American Insurance, insurance carrier, for injuries to her left and right arms and hands which she contends were caused by her cumulative work duties. She has alleged an injury date of November 26, 2019. (Original Notice & Petition; Testimony)

In April 2021, Ms. Milbrandt amended her petition to state a claim against the Second Injury Fund of Iowa (SIF). Prior to the arbitration hearing in this matter, Ms. Milbrandt and the SIF entered into a compromise settlement pursuant to Iowa Code section 85.35(3). The parties set forth their settlement in writing on forms prescribed by the Commissioner. This agency approved that settlement on March 23, 2022. The settlement agreement included the November 26, 2019, injury to Ms. Milbrandt's left and right arms and hands. Claimant does not dispute that the date of injury and the subject matter of the settlement with the SIF are the same as the pending litigation. I find the date of injury and the subject matter of the current pending case is the same

date of injury and subject matter as the settlement between Ms. Milbrandt and the SIF. (Defendants' Exhibit C; Testimony)

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3)(e).

The Iowa Supreme Court has recognized in Iowa, the right to workers' compensation is purely statutory. Downs v. A & H Const., Ltd., 481 N.W.2d 520, 527 (Iowa 1992) (citing Caylor v. Employers Mut. Casualty Co., 337 N.W.2d 890, 893 (Iowa App. 1983)).

Defendants contend the Iowa Workers' Compensation Commissioner does not have jurisdiction over this case because the Commissioner previously approved a compromise settlement between this claimant and the SIF involving the same alleged injury at issue in this case. Claimant contends her settlement with SIF was a contract between the parties to that settlement and is binding only on the parties to the contract.

Iowa Code section 85.35 addresses settlements and provides:

1. The parties to a contested case or persons who are involved in a dispute which could culminate in a contested case may enter into a settlement of any claim arising under this chapter or chapter 85A, 85B, or 86, providing for disposition of the claim. The settlement shall be in writing on forms prescribed by the workers' compensation commissioner and submitted to the workers' compensation commissioner for approval.

Iowa Code section 85.35(1)

In the present case, approximately three weeks prior to the arbitration hearing, claimant settled her claim against the SIF. Claimant and the SIF set forth their settlement in writing on forms prescribed by the Commissioner. The settlement was submitted to the Workers' Compensation Commissioner for approval and was approved on March 23, 2022. (Def. Ex. C) The SIF claim was settled on a compromise settlement basis pursuant to Iowa Code 85.35(3) which states: "[t]he parties may enter into a compromise settlement of the employee's claim to benefits as a full and final disposition of the claim."

Iowa Code section 85.35(9) provides:

9. Approval of a settlement by the workers' compensation commissioner is binding on the parties and shall not be construed as an original proceeding. Notwithstanding any provisions of this chapter and chapters 85A, 85B, 86, and 87, **an approved compromise settlement shall constitute a final bar to any further rights arising under this chapter and chapters 85A, 85B, 86, and 87 regarding the subject matter of the compromise** and a payment made pursuant to a compromise settlement

agreement shall not be construed as the payment of weekly compensation.

Iowa Code section 85.35(9)(emphasis added).

The Commissioner has previously addressed this statutory language in a similar situation. See Ahn v. Key City Transport, Inc., File Number: 5042640, 2015 WL 5927330 (App. Dec., Oct. 8, 2015). In Ahn, defendant-employer asserted that the section 85.35(3) compromise settlement between claimant and the SIF, which covered the same condition that was the subject of the case between the claimant and the defendant-employer, deprived this agency of jurisdiction for claimant to re-litigate the same condition against the defendant-employer. In Ahn the Commissioner looked at the language of Iowa Code section 85.35(3) and (9). The Commissioner stated:

The Iowa Supreme Court interpreted the statutory language, "final bar to any further rights," broadly in United Fire v. St. Paul Fire & Marine, 677 N.W. 2d 755 (Iowa 2004) The Court concluded that "a compromise special case settlement under section 85.33 bars an employer's or it [*sic*] insurer's statutory right to indemnification and contribution under section 85.21(3)." *Id.* at p. 761. Had the Court interpreted this statutory language narrowly, perhaps it would have found a difference between the subject matter of the compromise and the third-party claim. The Supreme Court's broad interpretation of the legislative intent to terminate the commissioner's jurisdiction of a compromised claim indicates claimant's approved compromise settlement with SIF in File No. 5038569 bars his claim in this case against defendants. If an employer or its insurer cannot sue a third party for an injury resolved by way of a compromise settlement, it only stands to reason that a claimant cannot sue his employer and its insurer for the same injury previously resolved with the Second Injury Fund by way of compromise settlement.

The settlement documents in claimant's compromise settlement with SIF in File No. 5038569 states the following, in pertinent part, in Paragraph E on the second page:

. . . I am aware that if the Workers' Compensation Commissioner approves this compromise settlement and the Second Injury Fund pays me the agreed sum, then I am barred from future claims or benefits under the Iowa Workers' Compensation Law for the injury(ies) . . . (citation omitted).

That language of the compromise settlement documents in File No. 5038569, which is form language formulated by this agency, supports defendants' argument that approval of the compromise settlement operates as a matter of law to bar the present claim against defendants for the same injury claimant previously settled with SIF. If the legal effect of the settlement was to foreclose only future claims against the parties to

the settlement itself, the language would contain the following: "... then I am barred from future claims or benefits *against the Second Injury Fund only* under the Iowa Workers' Compensation Law for the injury(ies)."

Analogous to this issue is the controlling law that a claimant cannot maintain a claim against SIF if a qualifying injury has previously been the subject of an approved compromise settlement. Ulrick v. Garner Printing and Second Injury Fund, File No. 949030 (App. April 29, 1994). In Brislawn v. Chapman, File No. 1073973 (Arb. Dec. September 23, 1999), this agency held that a prior special case settlement (n/k/a compromise settlement) between the claimant and the employer and its insurer constituted a final bar of the claimant's rights under the Iowa Workers' Compensation Act, even as against SIF, which was explicitly noted not to be released party to the settlement contract. Id., at p.2. The deputy commissioner in Brislawn stated:

Pursuant to the special case settlement statute, it is found claimant's settlement constitutes a final bar to any further rights under Iowa Code chapter 85 including Second Injury Fund benefits under Iowa Code Section 85.64. Based on a review of the file, including official notice taken under Iowa Code Section 17A.14(4), it is found the Second Injury Fund's affirmative defense has been established by a preponderance of the evidence, and claimant is barred from recovery against the Second Injury Fund as a matter of law. Ulrick v. Garner Printing and Second Injury Fund, File No. 949030 App. April 29, 1994); Hilpipre v. Care Initiatives, File No. 1057894 (App. September 27, 1997). See also Lambert v. Second Injury Fund, File No. 716025 (App. September 30, 1983).

See Ahn, File Number: 5042640, 2015 WL 5927330, at *6-7 (App. Dec., Oct. 8, 2015).

In Ahn, the Commissioner determined that the language of the compromise settlement documents was not specific enough and supported defendants' argument that approval of the compromise settlement operated as a matter of law to bar the claim against the defendants for the same injury. Regardless of the settlement language, the Commissioner further concluded that the compromise settlement between claimant and the SIF operated as a matter of law to deprive the agency of jurisdiction for claimant to re-litigate the same injury against the defendants that was the subject of the settlement with the SIF; the Commissioner concluded the settlement served as a second basis for dismissing claimant's petition. Id. at 8.

In the present case, Ms. Milbrandt contends that the language in the compromise settlement with the SIF preserved her claim against the defendant-employer. The settlement states:

6. RELEASE. In consideration of this payment, claimant releases and discharges the above-named defendant Second Injury Fund of Iowa from all liability under the Iowa Workers' Compensation Law for the above compromised claim.

7. STATEMENT OF AWARENESS OF CLAIMANT. I have read the compromise settlement and attached page(s). I understand that the money I receive under this settlement is the total amount I will receive from my claim and against the Second Injury Fund of Iowa and that there will not be a decision on my claim against the Second Injury Fund *[sic]*. I understand I may (1) consult with an attorney of my own choosing, or (2) call the Iowa Division of Workers' Compensation at 1-800-645-4583, or both in order to receive a full explanation of the terms of this document and of my rights under the Iowa Workers' Compensation Law. I have either done so or freely waive my right to do so. I understand that my claim is settled as to the Second injury Fund, other than as set out in the attachment.

(Defendants' Exhibit C, pp. 12-13)

In Ahn, the Commissioner held the settlement language was not specific enough to foreclose only future claims against the parties to the settlement itself. In the present case, the settlement language the parties inserted into the Commissioner's settlement form is similar to the language used in Ahn. It does state the claimant releases and discharges" the "Second Injury Fund of Iowa from all liability," but it does not say the "Second Injury Fund of Iowa only." Based on the language of Ahn, I conclude that this language used by the parties in the settlement form supports defendants' argument that approval of the compromise settlement operates as a matter of law to bar the present claim against the defendants for the same injury claimant previously settled with SIF.

The settlement with the SIF includes an "Attachment to Settlement" which was submitted and approved by the Commissioner as part of the settlement. The attachment states in pertinent part, "Further, the parties agree that in settlement of this claim with the Second Injury Fund, Plaintiff does not in any way compromise or waive Plaintiff's entitlement to benefits against the Employer and its insurer in File No. 20009756.01 pending before the Iowa Workers' Compensation Court." (Def. Ex. C, p. 14) The attachment is not part of the form language formulated by the agency and presumably was drafted by the parties to the settlement. This language may be strong enough to preserve the claim against an employer if such preservation was possible under the law. However, such preservation is not possible because in Ahn, the Commissioner concluded the compromise settlement between the claimant and the SIF operated as a matter of law to deprive this agency of jurisdiction for claimant to re-litigate that same condition against the defendant-employer. See id. at p.8. The Commissioner noted a compromise settlement constitutes a final bar to any further rights under chapter 85 regarding the subject matter of the compromise. Id. (citing Brislawn v. Chapman, File No. 1073973 (Arb. Dec. September 23, 1999)). Thus, I conclude the compromise settlement between Ms. Milbrandt and SIF operates as a

matter of law to deprive this agency of jurisdiction for her to re-litigate the same condition against the defendant-employer.

It should be noted there is a more recent decision from the Commissioner related to this issue. See Tweeten v. Tweeten d/b/a Tweeten Farms, File No. 20700058.01 (App. May 20, 2022).

In Tweeten, the claimant filed a petition against the defendant employer and its insurance carrier (“the defendants”) and a claim against the SIF. Tweeten sought permanent partial disability benefits from the defendants for an alleged scheduled loss to the right upper extremity. Tweeten sought industrial disability benefits from the SIF for the combined disability caused by the injury to his right lower extremity in 2008, and the 2018 work-related injury to his right upper extremity. Shortly before the arbitration hearing, the SIF notified the agency that the SIF and the claimant had reached a settlement and therefore the SIF would not participate in the hearing. Claimant proceeded to hearing against the employer and its workers’ compensation insurance carrier. In the arbitration decision the deputy found claimant established that his injury to his right upper extremity was work-related and he was entitled to permanency benefits. Defendants timely filed an application for rehearing. (Tweeten v. Tweeten d/b/a Tweeten Farms, File No. 20700058.01 (Arb. Dec., September 17, 2021).

In their application for rehearing defendants argued that claimant’s compromise settlement with the SIF deprived the agency of subject matter jurisdiction to hear the claim between the claimant and employer and insurance carrier. Defendants sought rehearing because the issue was not addressed in the arbitration decision¹. In the rehearing decision, the deputy held that the defendants’ contention that the agency lacked subject matter jurisdiction over the case was without support in fact or law. The deputy concluded the correct issue was whether the agency had jurisdiction of the case, not subject matter jurisdiction. The deputy held that because the defendants did not raise the issue of jurisdiction until their post-hearing brief, defendants had waived the issue. Furthermore, the deputy held that even if defendants had not waived the issue of jurisdiction, the defendants’ contention the SIF settlement barred an action against the employer was without merit and had no basis in law. As part of the deputy’s analysis, he distinguished the Ahn case from the facts in Tweeten and found Ahn was not applicable. See Tweeten, File No. 20700058.01 (Ruling on Motion for Rehearing Dec., October 13, 2021). The defendants appealed.

On appeal, the Commissioner affirmed the deputy’s finding that the issue of the compromise settlement did not relate to the agency’s subject matter jurisdiction over the case, but rather involved the agency’s authority to hear the case. In the appeal decision the Commissioner issued “additional and substituted analysis.” The Commissioner agreed with the deputy’s conclusion that the correct issue was whether the agency had jurisdiction of the case, not subject matter jurisdiction of the case. The Commissioner

¹ The SIF filed a notice of intent to settle on February 15, 2021 which merely advised that the claimant and the SIF had reached a settlement and that the SIF would not be present at the arbitration hearing. The arbitration hearing was held on March 10, 2021. The settlement between Tweeten and the SIF was approved by this agency on April 23, 2021. Thus, at the time of the arbitration hearing the settlement papers had not been filed with and approved by this agency.

further concluded that the defendants waived the issue of whether the agency had jurisdiction of the case because the issue was not raised at the time of the hearing. In the appeal decision, the Commissioner made no determination as to whether the compromise settlement between the claimant and the SIF would operate as a matter of law to deprive this agency of jurisdiction for claimant to re-litigate those same conditions and same date of injury against the defendants in this case, if the issue of jurisdiction had not been waived. In the substituted analysis of the Tweeten appeal decision the Commissioner does not mention the Ahn decision which suggests that Ahn is still good law. See Tweeten v. Tweeten d/b/a Tweeten Farms, File No. 20700058.01 (App. May 20, 2022).

We now turn to the case at bar. The situation in Ahn is applicable to the present case. In this case, the claimant entered into a compromise settlement under section 85.35(3) with the SIF. The settlement included her alleged November 26, 2019 injury to her right and left hands and upper extremities. In the pending case, Ms. Milbrandt is seeking benefits under Iowa Code chapter 85 for the same alleged date of injury and the same conditions for which she entered into a settlement with the SIF. The Commissioner approved the compromise settlement between the claimant and the SIF. The statutory language of Iowa Code 85.35(9) plainly states an approved compromise settlement shall constitute a final bar of any further rights arising under chapter 85 regarding the subject matter of the compromise. I conclude that when Ms. Milbrandt entered into the settlement agreement with the SIF, under Iowa Code section 85.35, she agreed that the settlement constituted a final bar to any further rights she had under chapter 85 regarding the subject matter of the compromise. The date of injury and the conditions she seeks compensation for against the defendants in this case were the subject matter of the compromise settlement. Thus, under Ahn, the compromise settlement between the claimant and the SIF operates as a matter of law to deprive this agency of jurisdiction for claimant to re-litigate those same conditions and same date of injury against the defendants in this case. Claimant cannot sue her employer and its insurer for the same injury previously resolved with the SIF by way of compromise settlement.

Because this agency lacks jurisdiction over this case, claimant's claim is dismissed.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's arbitration petition is dismissed.

Claimant shall take nothing from these proceedings.

Each party shall bear their own costs.

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1 (2) and 876 IAC 11.7.

Signed and filed this 29th day of August, 2022.



ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Paul Demro (via WCES)

Stephen Spencer (via WCES)

Tyler Smith (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.