ALASKA WORKERS' COMPENSATION BOARD

P.O. Box 115512 **Juneau, Alaska 99811-5512**

DEDERG D. CHUOL, Employee, Claimant,	)	FINAL DECISION AND ORDER
v.	)	AWCB Case No. 200612104
TRIDENT SEAFOODS CORP., Employer,	)	AWCB Decision No.14-0138
and	)	Filed with AWCB Anchorage, Alaska on October 10, 2014
LIBERTY INSURANCE CORPORATION, Insurer, Defendants.	)	

Dederg Chuol's April 28, 2014 petition to set aside the June 18, 2008 compromise and release agreement and his June 2, 2014 workers' compensation claim were heard on September 30, 2014 in Anchorage, Alaska. This hearing date was selected on August 14, 2014. Dederg D. Chuol (Employee) appeared, represented himself, and testified. Attorney Jeffrey Holloway appeared and represented Trident Seafoods Corporation and Liberty Insurance Corporation (Employer). No other witnesses testified. The record closed at the hearing's conclusion on September 20, 2014.

ISSUES

Employee contends the parties' June 18, 2008 compromise and release agreement (C&R) should be set aside. Employer contends the C&R is binding because Employee has not demonstrated any grounds upon which it may be set aside.

1. Should the parties' June 18, 2008 C&R be set aside?

Employee contends that when the C&R has been set aside he is entitled to a compensation rate adjustment, further temporary total disability (TTD), permanent partial impairment (PPI), and medical benefits. Employer contends the C&R should not be set aside, and, as a result, Employee is not entitled to further benefits and his claim must be dismissed.

2. If the C&R is set aside, to what, if any, benefits is Employee entitled?

FINDINGS OF FACT

The following facts and factual conclusions are either undisputed or established by a preponderance of the evidence:

1. On July 14, 2006, Employee aggravated a prior right thumb injury while working as a processor for Employer. (C&R, June 18, 2008).
2. In August 2007, Employee's doctor recommended fusion of the thumb joint. Because Employee was reluctant to undergo surgery, physical therapy was resumed and Employee was restricted to light-duty work. (C&R, June 18, 2008).
3. In December 2007, Employee was seen by employer's medical evaluator (EME), who attributed Employee's thumb joint instability to a basketball injury three years prior to the work injury. He opined the work injury resulted only in a strain that was medically stable, with 1% PPI, and that Employee was capable of returning to work without restrictions. (C&R, June 18, 2008).
4. On April 28, 2008, the parties filed the C&R, which includes the following provisions:

> To resolve all disputes among the parties with respect to all medical and related transportation benefits, compensation rate, compensation for disability (whether the same be temporary total, temporary partial, permanent partial impairment, or permanent total), penalties, interest, reemployment benefits . . . the employer will pay the employee the sum of $8,000.00. . . . .
>
> Except as provided below, the employee agrees to accept this amount in full and final settlement and discharge of all obligations, payments, benefits, and compensation which might presently be due to the employee at any time in the future under the Alaska Workers' Compensation Act.
> . . . .
> The parties agree that the employer shall not be responsible for any further medical and related transportation benefits for the employee. . . . .

> Upon approval . . . this Settlement Agreement shall be enforceable and shall forever discharge the liability of the employer to the employee . . . for all compensation and other benefits arising out of or in any way connected with the injuries, illnesses, symptoms, or conditions referred to in the Introduction which might now be due or might become due in the future . . .
>
> *By signing this Settlement Agreement, the employee acknowledges his intent to release the employer from any and all liability under the Alaska Workers' Compensation Act for all claims, unless expressly excepted in this agreement, arising out of or in any way connected with the injuries, illnesses, symptoms, or conditions referred to in the Introduction.*
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> The parties recognize that employee's injuries and disabilities are or may be continuing and progressive in nature and that the nature and extent of the injuries and the resulting disabilities may not be fully known at this time. *Nevertheless, the employee relying on his own judgment and not on any representations made by the employer or by the employer's agents, had decided that it is in his best interest to settle all claims under the Alaska Workers' Compensation Act* . . . . (C&R, June 18, 2008, emphasis added).

5. In signing the C&R, Employee swore he had read the agreement, understood its contents, and was signing freely and voluntarily. (C&R, June 18, 2008).
6. The C&R was denied on May 5, 2008. (C&R Denial Letter, May 5, 2008).
7. On June 18, 2008, a hearing was held on the C&R denial. The hearing chair asked Employee about his work restriction, and Employee replied it was "to lift only 25 pound." The chair then asked why Employee wanted to settle, and he explained "I ask will I get a job with [Employer's] Seattle office, and they say they don't have any light duty job. . . . and they're not willing to take me for regular duty job because I'm on restricted (sic). Employee then stated he had a job interview for a position as a cashier (with a different employer), stating "I don't need a thumb to be a cashier." Employee stated his thumb was doing "okay." The chair then stated:

> I wonder if you understand that if you sign this agreement and you're giving up these benefits for the settlement of $8,000, it will be nearly impossible to reopen the case. For instance, say you go to work as a cashier and it doesn't work out, you say you can't do it, and it causes – your thumb further problems once your more active, because you say you haven't worked for some time, and then you – you know, you're not going to be able to reopen this case. It would be almost impossible for you to say, or, wait a minute, I guess I shouldn't have settled this case. I'm going to go back to the Alaska Workers' Compensation Board and ask them to reopen my case so I can get – maybe

> you decide you would want to have the surgery. Do you realize that would be almost impossible?

Employee responded "Yeah." The chair confirmed "You realize that?" Employee again responded "Yeah." (Hearing Transcript, June 18, 2008).

8. At the September 30, 2014 hearing, Employee testified he had made a mistake in signing the agreement; that Employer's attorney told him Employer had jobs available, and he believed he would return to work for Employer. (Employee).

PRINCIPLES OF LAW

AS 23.30.001. Intent of the legislature and construction of chapter. It is the intent of the legislature that

(1) this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;

(2) worker's compensation cases shall be decided on their merits except where otherwise provided by statute;

(3) this chapter may not be construed by the courts in favor of a party;

(4) hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

AS 23.30.012. Agreements in regard to claims.
(a) At any time after death, or after 30 days subsequent to the date of injury, the employer and the employee . . . have the right to reach an agreement in regard to a claim for injury . . . under this chapter . . . but a memorandum of the agreement in a form prescribed by the board shall be filed with the board. Otherwise, the agreement is void for any purpose. If approved by the board, the agreement is enforceable the same as an order or award of the board and discharges the liability of the employer for the compensation notwithstanding the provisions of AS 23.30.130, 23.30.160, and 23.30.245. The agreement shall be approved by the board only when the terms conform to the provisions of this chapter and, if it involves or is likely to involve permanent disability, the board may require an impartial medical examination and a hearing in order to determine whether or not to approve the agreement. The board may approve lump-sum settlements when it appears to be in the best interest of the employee.

A workers' compensation C&R is a contract, and subject to interpretation as any other contract. *Seybert v. Cominco Alaska Exploration,* 182 P.3d 1079, 1093-1094 (Alaska 2008). Clear and convincing evidence is necessary in order to set aside a C&R. *Olsen Logging Co. v. Lawson*, 856 P.2d 1155 (Alaska 1993).

The Alaska Workers' Compensation Act (Act) does not permit workers' compensation settlement agreements to be set aside due to a unilateral or mutual mistake of fact. *Id*. at 1158-59. That an employee did not know the extent of his or her disability at the time the agreement was signed is a mistake of fact, and does not justify setting aside a C&R. *Smith v. CSK Auto, Inc*., 204 P.3d 1001, 1007-1008 (Alaska 2009).

A workers' compensation C&R may be set aside if based on fraud or misrepresentation. A party seeking to void the contract for fraud or misrepresentation must show, by clear and convincing evidence: (1) a misrepresentation was made; (2) which was fraudulent or material; (3) which induced the party to enter the contract; and (4) upon which the party was justified in relying. *Seybert* at 1093-1094.

A C&R may also be set aside for duress or coercion. A party seeking to void the agreement for duress or coercion must show, by clear and convincing evidence: 1) one party involuntarily accepted the terms of another; 2) circumstances permitted no other alternative; and 3) such circumstances were the result of coercive acts of the other party. *Helstrom v. North Slope Borough*, 797 P2d 1192, 1197 (Alaska 1990).

Clear and convincing evidence is "evidence that is greater than a preponderance, but less than proof beyond a reasonable doubt." It is "that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved." *Buster v. Gale,* 866 P.2d 837, 844 (Alaska 1994) (quoting *Castellano v. Bitkower,* 216 Neb. 806, 346 N.W.2d 249, 253 (1984)).

ANALYSIS

1. Should the parties' June 18, 2008 C&R be set aside?

A workers' compensation C&R is a contract subject to interpretation as any other contract. *Seybert.* To set aside a C&R, a party must demonstrate fraud, misrepresentation, coercion or duress perpetrated during the settlement process by clear and convincing evidence. *Id.* A unilateral mistake is insufficient. *Smith*. The fact that Employee claims he "made a mistake" in signing the agreement, is not grounds for setting aside the C&R.

A party seeking to void a C&R for fraud or misrepresentation must show by clear and convincing evidence: (1) a misrepresentation occurred; (2) which was fraudulent or material; (3) which induced the party to enter the contract; and (4) upon which the party was justified in relying. At hearing, Employee testified that he relied on statements by Employer's attorney that positions would be available with Employer. That testimony is not credible given Employee's testimony at the June 18, 2008 hearing that Employer did not have any light duty jobs, was unwilling to take him for a regular duty job, and he had interviewed with another employer. There is no credible evidence, let alone clear and convincing evidence, that anyone falsely represented to Employee that Employer would rehire him. Accordingly, the C&R may not be set aside for fraud or misrepresentation.

A C&R may also be set aside for coercion or duress, but Employee does not allege, nor has he presented any evidence, that he was coerced or subject to duress at the time he signed the agreement. The C&R may not be set aside for coercion or duress.

Under the clear and unambiguous terms of the agreement, in exchange for payment of $8,000.00, Employee waived any and all future benefits to which he may have been entitled under the Act, specifically including a waiver of compensation rate adjustment, TTD, PPI, and medical benefits, and he was not relying on the representations of Employer or its agents. Employee nevertheless signed the agreement, swearing he was freely and voluntarily waiving all of his rights under the Act, and forever discharging Employer and its workers' compensation carrier of any and all future liability for any benefits under the Act. There being no grounds upon which to set aside the parties' June 18, 2008 C&R, the request to set it aside will be denied.

2. If the C&R is set aside, to what, if any, benefits is Employee entitled?

Because the C&R will not be set aside, Employee is not entitled to further benefits. His June 2, 2014 claim will be dismissed.

CONCLUSIONS OF LAW

1. The parties' June 18, 2008 C&R will not be set aside.
2. Because the C&R will not be set aside, Employee is entitled to no further benefits.

ORDER

1. Employee's April 28, 2014 petition to set aside the June 18, 2008 compromise and release agreement is denied.
2. Employee's June 2, 2014 claim is dismissed.

Dated in Anchorage, Alaska on October 10, 2014.

ALASKA WORKERS' COMPENSATION BOARD

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Ronald P. Ringel, Designated Chair

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Linda Hutchings, Member

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Stacy Allen, Member

APPEAL PROCEDURES

This compensation order is a final decision. It becomes effective when filed in the office of the board unless proceedings to appeal it are instituted. Effective November 7, 2005 proceedings to appeal must be instituted in the Alaska Workers' Compensation Appeals Commission within 30 days of the filing of this decision and be brought by a party in interest against the boards and all other parties to the proceedings before the board. If a request for reconsideration of this final decision is timely filed with the board, any proceedings to appeal must be instituted within 30 days after the reconsideration decision is mailed to the parties or within 30 days after the date the reconsideration request is considered denied due to the absence of any action on the reconsideration request, whichever is earlier. AS 23.30.127.

An appeal may be initiated by filing with the office of the Appeals Commission: 1) a signed notice of appeal specifying the board order appealed from and 2) a statement of the grounds upon which the appeal is taken. A cross-appeal may be initiated by filing with the office of the Appeals Commission a signed notice of cross-appeal within 30 days after the board decision is filed or within 15 days after service of a notice of appeal, whichever is later. The notice of cross-appeal shall specify the board order appealed from and the ground upon which the cross-appeal is taken. AS 23.30.128.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accord with 8 AAC 45.050. The petition requesting reconsideration must be filed with the board within 15 days after delivery or mailing of this decision.

MODIFICATION

Within one year after the rejection of a claim, or within one year after the last payment of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, a party may ask the board to modify this decision under AS 23.30.130 by filing a petition in accord with 8 AAC 45.150 and 8 AAC 45.050.

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of DEDERG D. CHUOL, employee / claimant; v. TRIDENT SEAFOODS CORP, employer; LIBERTY INSURANCE CORPORATION, insurer / defendants; Case No. 200612104; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties on October 10, 2014.

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Pamela Murray, Office Assistant