

STATE OF MICHIGAN
WORKER'S COMPENSATION APPELLATE COMMISSION

RANDY C. GROSE,
PLAINTIFF,

V

DOCKET #02-0490

THOMAS FABRICATION, INCORPORATED AND
CITIZENS INSURANCE COMPANY OF OHIO;
MONTELL, USA, INCORPORATED AND
ZURICH-AMERICAN INSURANCE COMPANY,
DEFENDANTS.

APPEAL FROM DEPUTY DIRECTOR PETERSEN.

LARRY D. FOWLER FOR PLAINTIFF,
ROBERT F. AULD FOR DEFENDANTS THOMAS FABRICATION, INCORPORATED AND
CITIZENS INSURANCE COMPANY OF OHIO,
OLIVER P. LANGFORD AND ALAN GEBAUER FOR DEFENDANTS MONTELL, USA,
INCORPORATED AND ZURICH-AMERICAN INSURANCE COMPANY.

OPINION

GLASER, COMMISSIONER

Plaintiff appeals Deputy Director Craig R. Petersen's order on review, mailed October 30, 2002, affirming Magistrate Kenneth P. Frankland's redemption order, mailed June 4, 2002. We affirm the director's decision.

This case was initiated by the plaintiff filing Applications for Mediation or Hearing on February 7, 2001 and May 11, 2001, alleging injury to back on February 23, 1995 and continued work to December 22, 1999, aggravation of back injury from January 2, 2000 to December 3, 2000, and an eye injury in September of 2000.

The parties apparently negotiated a settlement and this matter was redeemed on June 4, 2002 before Magistrate Kenneth P. Frankland. A full hearing was held before the magistrate and all parties were provided an opportunity to present evidence in support of the redemption. Plaintiff appeared personally and testified to his understanding of his rights, as well as his acknowledgement of the Affidavit in Support of Redemption. Plaintiff was questioned about his understanding of the 15 day appeal period, as well as his understanding of the fact that he would be giving up future rights to any medical expenses that may be attributable to an injury which occurred while employed by the two defendant employers.

On June 18, 2002, plaintiff requested that the redemption be set aside. A director's review was performed on October 18, 2002, pursuant to plaintiff's request.

The referee's order may be reviewed by the director on his own initiative or must be reviewed upon the timely request of either party to determine whether the referee erred in concluding that the redemption agreement serves the purposes of the act or that for some reason the approval order is not just and proper. Whatever effect, if any, a party's "change of heart" should have on the referee's order of approval is something the director should decide in making his order on review. This "change of heart" cannot, however, form the basis for automatically setting aside the approval order without hearing or evaluation by the director. *Harrington v Brown Brothers*, 409 Mich 468 (1980)

The director's duty in reviewing a redemption order is to conduct an independent analysis of facts under MCL 418.836, to determine if redemption was "just and proper", and may not merely find "no error" in the magistrate's decision. *Traylor v Village Green Management*, 2000 ACO #152. The Commission's standard of review is to determine whether the factual conclusions of the director are supported by competent, material and substantial evidence on the whole record and to review the case de novo regarding alleged legal error.¹

At the hearing before the director, plaintiff was once again given the opportunity to present evidence to support his request to have the redemption set aside. The evidence presented at that hearing was plaintiff's testimony that his back pain had gotten worse and that he now experienced bladder incontinence, together with medical records from E.W. Sparrow Hospital. The director relied on those medical records in making his decision not to set the redemption order aside. We reprint his analysis of the request here:

Randy Grose (plaintiff) entered into a redemption settlement agreement with his former employers, Montell USA, Inc. and Qualified Mfg. Associates, Inc. (Titus the Tinner), and their insurance carriers, Zurich North America and Citizens Insurance, in the amount of \$6,000.00. This agreement was approved and the order personally served on the parties on June 4, 2002, by Magistrate Kenneth Frankland. Subsequently, the plaintiff appealed this redemption order on June 18, 2002 through his attorney, Larry Fowler.

At the director's review hearing, the plaintiff asked that the redemption order and agreement be set aside due to a change in his physical back condition subsequent to the redemption hearing. Particularly, the plaintiff argued that his back pain had increased to the point of greater loss of bladder and stool control, and the possibility of back surgery.

The defendants argued, through their attorneys, that the plaintiff had failed to establish good cause for setting aside the redemption agreement, and requested that the order be affirmed without modification.

¹ *Robbins v Coca-Cola Enterprises, Inc*, 2002 ACO #336.

In reviewing this matter, the director must determine whether the redemption order and agreement is “just and proper” under the statute after conducting an independent analysis of the facts set forth at the redemption hearing before the magistrate, along with any new information provided by the parties at the redemption review hearing. *Harrington v Brown Brother [sic], Inc*, 409 Mich 468 (1980). Based on the following rationale, I find that the plaintiff has failed to establish good cause for having the redemption agreement set aside.

The plaintiff’s workers’ compensation claim has always alleged a work related back injury and condition dating back to 1994. Various health care providers for his back condition have treated the plaintiff, but he has never been totally symptom free since his injury. His symptoms have included, but are not limited to, pain radiating in hips and down his legs, aching feeling, back muscle spasms, loss of bladder and bowel control, difficulties sleeping and prolonged sitting when driving, and occasional scrotum burning (Exhibit #1). His physicians have treated him conservatively over the years for his condition. None of the past or current treating physicians have recommended surgery in order to relieve his back symptoms.

The plaintiff testified that after the redemption hearing he experienced an increase in his loss of bladder and bowel control along with an increase in pain down his right leg and hips. He now notices a “grinding” sound in his back with an increase in the pain when moving. He testified that he had not returned to work since the redemption hearing, and had not sustained any injury to his back. He has treated with Drs. Bills and Sankey since his redemption hearing. He has been treated with medication and epidural injections to his back. Surgery has not been recommended by any physician to relive [sic] his back symptoms.

The plaintiff has failed to establish that his back condition has significantly changed subsequent to the redemption hearing taking place. The symptoms that he mentioned at the director’s review hearing are consistent with the symptoms he has experienced since his back injury in 1994. While he has alleged a significant increase in symptoms subsequent to the redemption hearing, the medical treatment provided by his physicians does not support this finding. As noted above, none of the physicians have recommended surgery; only injections, physical therapy, and home exercises.

At the redemption hearing, the plaintiff was advised that any future rights of medical care attributable to his alleged work related injuries would be given up based on the redemption settlement (Redemption transcript, p. 10 & 11). The plaintiff understood his rights and what he was giving up as a result of agreeing to the settlement.

We are convinced that the director has conducted an independent analysis of the facts under Section 836, to determine if the redemption was “just and proper”, pursuant to *Harrington, supra*. Further, the director determined plaintiff did not have good cause to set aside the redemption. The director’s decision is supported by the requisite evidence and legally correct.

Therefore, we affirm the director.

Commissioners Leslie and Will concur.

Martha M. Glaser

Richard B. Leslie

Rodger G. Will

Commissioners

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This cause came before the Appellate Commission on plaintiff's appeal from Deputy Director Craig R. Petersen's order on review, mailed October 30, 2002, affirming Magistrate Kenneth P. Frankland's redemption order, mailed June 4, 2002. The Commission has considered the record and counsel's briefs, and believes that the director's decision should be affirmed. Therefore,

IT IS ORDERED that the director's decision is affirmed.

Martha M. Glaser

Richard B. Leslie

Rodger G. Will

Commissioners