

VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by MARSHALL
Commissioner

May 3, 2018

LYNN GUTIERREZ v. SENSATA TECHNOLOGIES
ACE AMERICAN INS CO (TRAV INDEMNITY CO), Insurance Carrier
ESIS, INC, Claim Administrator
Jurisdiction Claim No. VA00001336817
Claim Administrator File No. C877C4860438
Date of Injury May 23, 2017

James B. Feinman, Esquire
For the Claimant.

Scott C. Ford, Esquire
For the Defendants.

REVIEW on the record by Commissioner Marshall, Commissioner Newman and Commissioner Rapaport at Richmond, Virginia.

The claimant requests review of the Deputy Commissioner's April 19, 2018 Order granting the defendants' April 18, 2018 motion to withdraw consent to the March 20, 2018 Stipulated Order.

We AFFIRM.

I. Material Proceedings

The claimant filed a claim alleging a work injury on May 23, 2017. She requested temporary total disability benefits beginning May 23, 2017.

The parties submitted a Joint Stipulated Order which was entered by the Commission on March 20, 2018. The Order provided for temporary total disability benefits beginning May 23, 2017 at the compensation rate of \$630.68 per week and medical benefits for a back injury. The

Order indicated there was a dispute regarding a credit for any short-term disability benefits paid to the claimant.

A hearing was convened on April 12, 2018 to address the defendants' entitlement to a credit for payments made through the employer's short-term disability program.

On April 18, 2018, the defendants withdrew their consent to the Stipulated Order entered on March 20, 2018. Counsel for the defendants wrote, "This afternoon, claimant's counsel informed my office that he believed the payment issued to the claimant per the Stipulated Order was incorrect. As today is the 30th day from the date of the entry, the defendants respectfully request to withdraw consent in order to attempt to resolve the payment dispute without the need for a hearing."

On April 19, 2018, the Deputy Commissioner granted the motion. The claimant objected to the ruling on that date. The Deputy Commissioner confirmed her ruling. She wrote, "In response, each party has the right to withdraw consent to stipulations within the prescribed time period. Defense counsel did so timely and the order is deemed vacated." She concluded, "We cannot issue an opinion on the amount of a credit since we currently have no evidence that a credit is due as part of a compensable claim."

The claimant requested review. She asserts, "Given the Employer was already given a hearing for the sole purpose of allowing it to establish a credit if it could, and it failed to do so, the Claimant should receive the Award and benefits appurtenant thereto which the Employer agreed and stipulated are due. I request the Commission enter an open Award consistent with the Stipulated Order entered on March 20, 2018."

II. Findings of Fact and Rulings of Law

Virginia Code § 65.2-701(C) encourages agreement between the parties. Once the parties reach an agreement, the Commission determines if the agreement is in the best interest of the employee. That agreement is not binding until the Commission approves it. Damewood v. Lanford Bros. Co., 29 Va. App. 43, 45, 509 S.E.2d 530, 531 (1999). The parties reached an agreement and submitted it to the Commission for approval. The Deputy Commissioner acts upon authority from the Commission. Va. Code § 65.2-203. The Deputy Commissioner entered an Award based upon the agreement of the parties.

We consistently allow the parties to file motions for reconsideration of Awards and Opinions. The defendants withdrew their consent to the agreement by motion to the Deputy Commissioner.

Either party may withdraw its consent to an agreement after a Deputy Commissioner has entered an Award if that party makes that request within 30 days from the date of the Award. See Sovran Fin. Corp. v. Nanney, 12 Va. App. 1156, 408 S.E.2d 266 (1991) (either party may petition the Commission within review period). At this stage of the proceedings, and considering the scope of the record we have before us, we do not find the claimant's argument based upon equitable estoppel compelling. We do not have sufficient evidence before us regarding the reason the employer withdrew its agreement to the stipulations.

The defendants withdrew their consent to the agreement within 30 days of its issuance. The Deputy Commissioner did not abuse her discretion in vacating the Stipulated Order.

We encourage the parties to resolve this matter by agreement. Va. Code § 65.2-701(C).

III. Conclusion

We AFFIRM the Deputy Commissioner's April 19, 2018 Order.

This matter is hereby removed from the Review docket.

APPEAL

You may appeal this decision to the Court of Appeals of Virginia by filing a Notice of Appeal with the Commission and a copy of the Notice of Appeal with the Court of Appeals of Virginia within 30 days of the date of this Opinion. You may obtain additional information concerning appeal requirements from the Clerks' Offices of the Commission and the Court of Appeals of Virginia.