

VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by RAPAPORT
Commissioner

Mar. 16, 2023

BERRY RADTZ v. CROSSROADS FUEL SERVICE INC
LM INS CORP, Insurance Carrier
LM INSURANCE CORPORATION, Claim Administrator
Jurisdiction Claim No. VA00001854844
Claim Administrator File No. 80DF18600
Date of Injury: May 24, 2021

Judd B. Mendelson, Esquire
For the Claimant.

Sean M. O'Connor, Esquire
For the Defendants.

REVIEW on the record by Commissioner Newman, Commissioner Rapaport, and Chief Deputy Commissioner Szablewicz at Richmond, Virginia.¹

The claimant requests review of the January 24, 2023 Order. The claimant's February 22, 2023 review request remains PENDING for sixty (60) days for the parties to show remittance to the defendants of any sums paid to the claimant, pursuant to the January 24, 2023 Order.

I. Material Proceedings

On June 16, 2021, the claimant filed a Claim for Benefits alleging he suffered a compensable vehicle accident that injured his lower S1, back, ribs, and brain on May 24, 2021. He requested medical benefits, wage loss benefits beginning May 24, 2021, and payment/reimbursement of medical expenses. On December 18, 2021, the claimant notified the Commission

¹ Pursuant to Virginia Code § 65.2-705(D), the Chief Deputy Commissioner participated on this review panel by designation of the Chairman due to Commissioner Marshall's absence.

he had signed agreement forms. In this letter, he also asserted a claim for injuries to his left thumb, knees, and brain on May 24, 2021. He requested to preserve his claim for these injuries.

Pursuant to the agreement forms submitted by the parties, on March 21, 2022, the Commission entered an Award Order providing medical benefits for the claimant's injuries to his head, neck, back, ribs, and lung, and temporary total disability benefits beginning May 25, 2021.²

On January 23, 2023, the parties filed an executed Petition seeking approval of a settlement, and it was approved by the Commission with an Order dated January 24, 2023.

On February 22, 2023, the claimant withdrew his consent to the Order, pursuant to his right to request review under Virginia Code § 65.2-705. The claimant explained he had learned at a doctor's appointment that day that the hardware in his back had failed, and two anchor screws had broken in half. The claimant requests that the Commission refer the matter for a hearing "to determine the requirements to vacate the order." The claimant also requests the Commission vacate the Order.

II. Findings of Fact and Rulings of Law

Virginia Code § 65.2-705 provides for Commission review "[i]f an application for review is made to the Commission within 30 days after issuance of an award" Rule 3.1 of the *Rules of the Virginia Workers' Compensation Commission* provides that "[a] request for review of a

² On March 25, 2022, the Commission issued a Notice of Hearing that an evidentiary hearing was scheduled for June 16, 2022 to address the remaining claims within the June and December 2021 filings. By letter dated April 13, 2022, claimant's counsel confirmed preservation of the claim for a brain injury and indicated the hearing set for June 16, 2022 could be removed from the docket as the claim was not ripe for adjudication. On April 14, 2022, the Commission issued an Order, indicating the parties had advised the Commission that they resolved the issues in controversy between them and were ordered to submit the executed agreements or other settlement documents within thirty days to the Commission. The hearing set for June 16, 2022 was removed from the docket.

decision, order or award of the Commission shall be filed by a party in writing with the Clerk of the Commission within thirty (30) days of the date of such decision, order or award.”

Where either party withdraws its approval of an agreement after the corresponding award has been entered and a proper request for review is made within the statutory period, the award will be vacated, whether or not there has been fraud, mutual mistake, or imposition. *See Sovran Fin. Corp. v. Nanney*, 12 Va. App. 1156, 1161 (1991). The claimant’s February 22, 2023 Request for Review of the January 24, 2023 Order is timely, and the claimant has withdrawn his agreement to the settlement order; therefore, there are grounds to vacate the Order. Nonetheless, we decline to vacate a settlement order until all proceeds from the settlement are remitted to the defendants.³ *See Garcia-Hernandez v. Geofreeze, Inc.*, JCN VA00000906780 (Oct. 19, 2015); *Cowell v. Orapax, Inc.*, VWC File No. 234-29-32 (Sept. 20, 2011).

This review proceeding shall remain pending for sixty days for the parties to submit satisfactory evidence to the Commission that all sums received by the claimant and his counsel, pursuant to the January 24, 2023 Order, have been remitted to the defendants. At that point, the Commission will consider whether to vacate the Order, based on the presented evidence. We shall deny and dismiss the appeal if the funds have not been fully returned, or if the evidence submitted of such remittance is insufficient, within the prescribed sixty days.

III. Conclusion

This review remains PENDING on the review docket for sixty (60) days from the date of this Opinion.

³ The Commission records reflect payment in accordance with the Order was sent to the claimant prior to the claimant’s filing of the review request.

APPEAL

Because this is an interlocutory issue, there is no right of appeal to the Court of Appeals of Virginia on this issue until the Commission has issued a final decision in this case.