

IN THE COURT OF APPEALS OF IOWA

FILED

JAN 26 1989

CLERK SUPREME COURT

JRRW TRANSPORT, INC. and
WAUSAU INSURANCE CO.,

Plaintiffs-Appellees,

vs.

DUANE F. ENGLER,

Defendant-Appellant.

141

8-145
87-860

Appeal from the Iowa District Court for Fayette County
(No. 40811), L.D. Lybbert, Judge.

Defendant appeals the trial court's order compelling him to specifically perform a compromised settlement of his claims for workers' compensation benefits. **AFFIRMED.**

John L. Riccolo, and Diane B. Gould, of Wenzel, Piersall, Riccolo & Estlund, P.C., Cedar Rapids, for defendant-appellant.

John M. Bickel and Diane Kutzko, of Shuttleworth & Ingersoll, Cedar Rapids, for plaintiffs-appellees.

Heard by Oxberger, C.J., and Donielson and Schlegel,
JJ.

OXBERGER, C.J.

This is an appeal from the judgment ordering specific performance of an agreement of settlement of claims for workers' compensation. Defendant claims that: (1) he has the right to rescind an agreement pursuant to Iowa Code section 85.35 before the agreement is signed and approved by the Industrial Commissioner; (2) there was a mutual mistake of material fact that operated to void the compromise settlement agreement; and (3) there was no bona fide dispute as to causation, and thus the settlement agreement could not have been approved by the Industrial Commissioner. Upon our de novo review, we affirm.

Engler, the defendant, was a truck driver for JRRW Transport, Inc. (JRRW). Engler made claim against his employer JRRW for injuries he alleged occurred arising out of and in the course of his employment. Specifically, he alleged his condition of plasma cell granuloma was aggravated by inhalation of salt dust at work in the fall of 1983. On January 3, 1984, Engler's left lung was surgically removed.

In April 1984 Engler filed a petition with the Iowa Industrial Commission seeking workers' compensation benefits against JRRW. At the time he was represented by attorney John Hofmeyer. Engler's claim was that his injuries arose out of and in the course of his employment and that his condition was aggravated by the inhalation of

salt dust at work in the fall of 1983. The record indicates the medical expert's disagreed as to the cause of plasma cell granuloma.

Attorney Hofmeyer and attorneys for the employer and insurance carrier entered into settlement negotiations and agreed to settle under Iowa Code section 85.35 for the sum of \$1,000. The attorney for the employer and insurance carrier prepared a joint application for compromise settlement and attached selected medical records and a proposed order authorizing and approving the joint application for compromise settlement. The proposed order was signed by attorney Hofmeyer and Engler, who then forwarded documents to the Iowa Industrial Commissioner. The documents were returned due to the fact that they had not been notarized. Before the documents were returned to the Industrial Commissioner, Engler had hired a different attorney, John Riccolo, and had changed his mind and decided to rescind the settlement agreement. The employer and the insurance carrier then filed a petition to compel specific performance of the settlement agreement.

Engler first argues that a workers' compensation settlement is not binding until it is actually signed by the commission and approved. However, we find the case of Dillon v. City of Davenport, to be dispositive on this issue. 366 N.W.2d 918 (Iowa 1983). In Dillon despite the fact that the settlement documents had not even been

signed, in addition to not being approved by the Industrial Commissioner, the Iowa Supreme Court held that the settlement was enforceable. Id. The defendant would have us read Dillon narrowly to apply only to employers and not employees. We decline to do so. Engler and his attorney knowingly and voluntarily entered into a settlement of \$1,000. We affirm the trial court's order compelling specific performance. However, the decision to approve or disapprove of the settlement still remains with the commissioner.

Second, the defendant argues that although there was a dispute as to whether the underlying condition was caused by work exposure, there was no bona fide dispute that his condition was aggravated by the work exposure and thus the settlement agreement could not be approved by the Iowa Industrial Commissioner. A review of the medical evidence, however, does not support such an argument. We note the majority of the medical evidence reaches the opposite conclusion and finds no causal connection.

Finally, Engler asserts there was mutual mistake and thus the compromise is void. He claims when the joint application for compromise settlement was drafted and submitted, there were no medical records submitted that addressed the issue of whether his inhalation of the salt during his employment aggravated his underlying medical condition.

Rule 343-6.1 (85,86) of the Iowa Administrative Code provides:

When the claimant, in a matter over which the Industrial Commissioner has jurisdiction, is represented by an attorney licensed to practice in the state, and the claimant's attorney agree that evidence of a bona fide dispute exists as to the enumerated facts of Section 85.35 of the Code, and the parties set forth a specific statement of facts of the bona fide dispute and allege that such facts are true, professional statement of counsel for the parties shall constitute prima facie evidence that a bona fide dispute exists as required by Section 85.35 of the Code.

We find defendant's mutual mistake argument arising from lack of submission of medical evidence to be misplaced.

We affirm the trial court's order for specific performance.

AFFIRMED.