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NO. 97792-5

SUPREME COURT OF THE STATE OF WASHINGTON

ZBIGNIEW LASKOWSKI,

Petitioner,

v.

WASHINGTON STATE DEPARTMENT OF LABOR & INDUSTRIES,

Respondent.

**ANSWER TO PETITION FOR REVIEW
DEPARTMENT OF LABOR & INDUSTRIES**

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I. INTRODUCTION

Settlements at the Board of Industrial Insurance Appeals are binding on the parties to the agreement. Zbigniew Laskowski seeks to overturn a settlement he agreed to based on a claim that the wrong procedure was followed, namely that there should have been sworn testimony about the merits of his case. But he ignores that he entered into a settlement agreement that took away the need for testimony.

Laskowski entered into a settlement for a binding medical examination under WAC 263-12-093. In a binding examination, the parties agree that after the claimant attends a medical examination performed by an examining doctor selected by agreement, the parties will be bound by the examiner's conclusions. This procedure benefits the parties because it allows them to avoid the delay and uncertainty of protracted litigation and to resolve their dispute with an objective medical opinion free of cost.

The Board properly followed WAC 263-12-093's provisions and so the trial court upheld the settlement. The Court of Appeals correctly affirmed, and review should be denied.

II. ISSUE

The Board provides a mechanism for parties to a workers' compensation appeal to have an independent medical examination resolve

the parties' disputes. WAC 263-12-093(4). Laskowski entered into a settlement to participate in a binding examination, and the Board issued an order on agreement of parties based on the doctor's findings. Did the trial court err in ruling that Laskowski should be bound to the settlement agreement?

III. STATEMENT OF THE CASE

Laskowski injured his back in 2006 while working, and the Department accepted his claim for workers' compensation benefits. AR 14, 209. He received several years of treatment and other benefits, and at one point the Department closed his claim and then later reopened it after his back condition worsened. AR 18, 408-20. After reopening the claim and providing more treatment and time loss compensation, the Department eventually ended time loss compensation and closed his claim again in 2015. AR 24. Laskowski appealed to the Board. AR 1.

At the Board, Laskowski entered into a settlement for a binding medical examination. AR 1, 50-51. As part of this agreement, he agreed that an examination would take place and then the Board would enter an order based on the examination report:

At the conference, the parties agreed to resolve this matter by means of a binding medical examination.

....

The examining physician's ultimate opinions will resolve all issues in this appeal. The parties will be bound by these

opinions. The Board will issue an Order on Agreement of Parties based on these opinions.

AR 50-51.

In a binding medical examination, the Board submits a list of proposed questions to a doctor, and the parties agree to abide by the results of the examination. *See* WAC 263-12-093(4). The Board judge sent the agreed questions to the doctor, with medical records. AR 56-400, 401-02. After an examination, the doctor filed her report. AR 407-25. The doctor found Laskowski had more disability than the Department had found in its order, but her findings were otherwise consistent with the Department's closing order. AR 422-25, 426. She agreed with the Department that Laskowski required no further treatment and so was at maximum medical improvement. AR 424.

After receiving the report, consistent with the parties' agreement to resolve the claim based on the agreed examiner's findings, the Board entered an order affirming the Department order ending wage replacement benefits and closing the claim, but directing the Department to provide the additional permanent partial disability to Laskowski in the binding examination report. AR 1. Laskowski appealed to the superior court, which affirmed the Board order. CP 306-09. The Court of Appeals affirmed the trial court, and now Laskowski seeks review.

IV. ARGUMENT

Laskowski states no ground for review under RAP 13.4, and none exists. This case involves the routine principle that parties should be bound by their settlement agreement and presents no reason for review.

A. Laskowski Is Bound by the Settlement Agreement

Laskowski agreed that the Board should decide the case based on the facts as found by the doctor performing the binding examination. AR 50. Laskowski admits that he entered in an agreement to have an examination by an independent medical examiner. Pet. 10. At the Board, “[i]f an agreement concerning final disposition of any appeal is reached by all the parties present or represented at a conference, an order shall be issued in conformity with their agreement, providing the board finds the agreement is in accordance with the law and the facts.” WAC 263-12-093(1). WAC 263-12-093(4) provides for agreed examinations:

The parties present at a conference may agree to a vocational evaluation or a further medical examination of a worker or crime victim, including further evaluative or diagnostic tests, except such as require hospitalization, by medical or vocational experts acceptable to them, or to be selected by the industrial appeals judge. In the event the parties agree that an order on agreement of parties or proposed decision and order may be issued based on the report of vocational evaluation or medical examination, the industrial appeals judge may arrange for evaluation or examination and the board will pay reasonable and necessary expenses involved. Upon receipt by the board, copies of the report of such examination or evaluation will

be distributed to all parties represented at the conference and further appropriate proceedings will be scheduled or an order on agreement of parties or proposed decision and order issued.

Parties are bound by settlement agreements entered into on the record, including binding examinations. CR 2A; WAC 263-12-093(4); *Doris E. Slater*, No. 860407, 1987 WL 61354, at *2 (Wash. Bd. Indus. Ins. Appeals Apr. 2, 1987).

Laskowski's primary argument is that the Board judge should have followed provisions related to hearing procedures, including using sworn testimony and issuing proposed decisions, in RCW 51.52.100, RCW 51.52.104, and other statutes. Pet. 6, 9-11, 15-16. Providing sworn testimony and a proposed decision and order is unnecessary under WAC 263-12-093(4). This is because the case has settled and there is no hearing; instead, the matter is resolved under WAC 263-12-093(4).

Using a binding exam benefits all parties, including injured workers. The Board pays for the exam, eliminating the need for the worker to pay. A binding exam can reduce the uncertainty of litigation. And Laskowski benefited here because his permanent partial disability award increased.

Laskowski has not shown that WAC 263-12-093(4) was not followed. The Board judge arranged for questions to the doctor and

received a report, upon which an order was entered. This is what was agreed to. AR 50. A case involving routine adherence to a settlement agreement does not warrant review.

Related to his argument about procedure, Laskowski accuses the Board judge of misconduct, and he levies the same charge against the superior court. AR 5, 7, 16. But he produces no evidence of ex parte contact nor of altered records, and these arguments should be disregarded. Inchoate accusations do not support a petition for review.

B. The Court Should Not Reach Laskowski's Arguments About the Merits of the Doctor's Report

Laskowski raises several arguments related to the content of the agreed examiner's report and other medical evidence. Pet. 11-15. But this case is resolved by the settlement agreement. Laskowski agreed to abide by the doctor's findings, and he cannot now disagree with the discussion in the report.

V. CONCLUSION

Laskowski freely entered into a settlement and he shows no reason to disturb this agreement. Review of this petition is not warranted.

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RESPECTFULLY SUBMITTED this 6th day of May, 2020.

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CERTIFICATE OF
SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, she caused to be served the Department of Labor & Industries' Answer to Petition for Review and this Certificate of Service in the below described manner:

E-Filing via Washington State Appellate Courts Portal:

Susan Carlson
Supreme Court Clerk
Washington State Supreme Court

E-Mail via Washington State Appellate Courts Portal:

Zbigniew Laskowski
zlaskowski@yahoo.com

DATED this 6th day of May, 2020.



SHANA PACARRO-MULLER
Legal Assistant

WASHINGTON ST. ATTORNEY GENERAL - LABOR & INDUSTRIES DIVISION - SEATTLE

May 06, 2020 - 9:06 AM

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