

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

Joseph Quinones

Opinion No. 04-16WC

v.

By: Phyllis Phillips, Esq.  
Administrative Law Judge

State of Vermont

For: Anne M. Noonan  
Commissioner

State File No. FF-59764

**RULING ON CROSS MOTIONS FOR SUMMARY JUDGMENT**

**APPEARANCES:**

Carey Rose, Esq., for Claimant  
William Blake, Esq., for Defendant

**ISSUE PRESENTED:**

1. As a matter of law, is Defendant bound by the terms of an Agreement for Permanent Partial or Permanent Total Disability Compensation (Form 22) that was signed by the parties but not approved by the Commissioner prior to its purported rescission?

**EXHIBITS:**

Defendant's Exhibit A: Psychology initial assessment (Joann Joy, Ph.D.),  
7/30/2014  
Defendant's Exhibit B: Independent behavioral medicine and pain experience  
evaluation (Dr. Mann), October 20, 2014  
Defendant's Exhibit C: Independent medical evaluation supplemental report (Dr.  
Backus), November 17, 2014  
Defendant's Exhibit D: Email from Lori Clark, November 13, 2014

**FINDINGS OF FACT:**

The following facts are undisputed:

1. At all times relevant to these proceedings, Claimant was an employee and Defendant was his employer as those terms are defined in Vermont's Workers' Compensation Act.

2. On February 4, 2014 Claimant injured his right wrist in the course and scope of his employment as a corrections officer for Defendant.
3. Defendant accepted Claimant's right wrist strain/hyperextension injury as compensable and paid all associated medical benefits.
4. Claimant never presented a formal written "claim" for a psychological injury. However, the medical complaints associated with his compensable injury evolved to the point where he was exhibiting psychological complaints. Specifically, on July 30, 2014 Dr. Joann Joy offered an opinion that Claimant was suffering from depression and anxiety regarding the pain issues referable to his February 2014 work injury. *Defendant's Exhibit A*. I find that this reasonably can be construed as notice of a claimed psychological injury.
5. At Defendant's request, on October 10, 2014 Claimant underwent an independent medical evaluation with Dr. Backus. Claimant was not represented by an attorney at the time.
6. In his October 10, 2014 report, Dr. Backus concluded that Claimant had sustained a work-related wrist injury, which warranted an eight percent whole person permanent impairment rating. Dr. Backus further stated that the exact cause of Claimant's chronic pain was medically unknown, "but it did start with the work injury and remains related at this time to a reasonable degree of medical certainty."
7. At Defendant's request, on October 20, 2014 Claimant underwent an independent psychological evaluation with Stephen Mann, Ph.D. In his report, Dr. Mann concluded that Claimant had not experienced a psychological injury causally related to his February 2014 compensable wrist injury. Instead, in his opinion Claimant suffers from somatoform disorder, which he stated "is based on a long-term, chronic pattern of somatization arising from ingrained personality traits, not causally related to a specific physical disorder." *Defendant's Exhibit B*.
8. Sometime before November 10, 2014 Defendant drafted an Agreement for Permanent Partial or Permanent Total Disability Compensation (Form 22) and sent it to Claimant to sign and return. The terms of the agreement called for Defendant to pay permanent partial disability benefits in accordance with Dr. Backus' October 10, 2014 eight percent impairment rating.
9. Claimant, who was still *pro se* at the time, signed Defendant's proposed Form 22 Agreement on November 10, 2014.
10. On November 12, 2014 Defendant's workers' compensation insurance adjuster signed the proposed Form 22 Agreement and submitted the document, now fully executed, to the Commissioner for approval.

11. On November 13, 2014 Defendant's adjuster, Lori Clark, sent the following email message to the Department's workers' compensation specialist:

I hereby rescind my previously expressed consent to the Form 22 based on Dr. Mann's report dated 10/20/14. Please immediately purge this agreement from the Department of Labor's file.

12. At Defendant's request, on November 17, 2014 Dr. Backus drafted a "supplemental report," in which he retracted his eight percent permanent impairment rating on the basis of Dr. Mann's reported psychological findings and conclusions. Specifically, Dr. Backus determined that the history Claimant previously had reported to him was unreliable, and that he likely had not suffered any physical injury at all. In Dr. Backus' opinion, a more likely alternative explanation for the symptoms Claimant reported was "as part of his somatization unrelated to the work injury." Dr. Backus thus concluded that Claimant had suffered a zero percent permanent impairment related to his "alleged" work injury. *Defendant's Exhibit C*.
13. On November 17, 2014 Ms. Clark again corresponded via email with the Department's workers' compensation specialist, as follows:

Hello, I am writing in follow [sic] to my request to rescind the previously issued Form 22. I attach for further support of my request a supplemental report from Dr. Backus. Can you please confirm and respond on my formal request for rescinding the Form 22? Thank you.

14. The Commissioner never approved the fully executed Form 22 Agreement.
15. Claimant did not agree to a rescission and instead hired legal counsel to enforce the Form 22 Agreement.
16. There are no allegations of fraud or mutual mistake of fact in this claim.

### **DISCUSSION:**

1. In order to prevail on a motion for summary judgment, the moving party must show that there exist no genuine issues of material fact, such that it is entitled to a judgment in its favor as a matter of law. *Samplid Enterprises, Inc. v. First Vermont Bank*, 165 Vt. 22, 25 (1996). In ruling on such a motion, the non-moving party is entitled to the benefit of all reasonable doubts and inferences. *State v. Delaney*, 157 Vt. 247, 252 (1991); *Toys, Inc. v. F.M. Burlington Co.*, 155 Vt. 44 (1990). Summary judgment is appropriate only when the facts in question are clear, undisputed or unrefuted. *State v. Heritage Realty of Vermont*, 137 Vt. 425 (1979). It is unwarranted where the evidence is subject to conflicting interpretations, regardless of the comparative plausibility of facts offered by either

party or the likelihood that one party or another might prevail at trial. *Provost v. Fletcher Allen Health Care, Inc.*, 2005 VT 115, ¶15.

2. The legal question presented here is whether Defendant can be bound to the terms of an Agreement for Permanent Partial or Permanent Total Disability Compensation (Form 22) that was signed by the parties but not approved by the Commissioner prior to its purported rescission. As the facts are not disputed, the issue is appropriate for resolution on summary judgment.
3. Vermont's workers' compensation statute, 21 V.S.A. §662(a), requires that the parties to a compensation agreement must file "a memorandum thereof" with the commissioner for review and approval. Approval is conditioned on a determination that the agreement's terms "conform to the provisions" of the Workers' Compensation Act. *Id.* "If approved by the commissioner, such agreement shall be enforceable" and thereafter will be subject to modification only in limited circumstances. *Id.*
4. Workers' Compensation Rule 17.0000<sup>1</sup> identifies the forms, among them the Agreement for Permanent Partial or Permanent Total Disability Compensation (Form 22), that satisfy the statute's "memorandum" requirement. It also reiterates the requirement for, and effect of, approval, as follows:

Once executed by the parties and approved by the [Workers' Compensation] Division,<sup>2</sup> these forms shall become binding agreements and absent evidence of fraud or material mistake of fact the parties shall be deemed to have waived their right to contest the material portions thereof.
5. Both statute and rule thus clarify the conditions precedent for even a fully executed compensation agreement to become a binding and enforceable contract – first, it must be reviewed by the commissioner for compliance with the statute; second it must be approved; and third, it must not have been induced by fraud or otherwise invalidated by the parties' material mistake of fact.
6. The commissioner's responsibility to review and approve compensation agreements is more than just a formality. It is a necessary component of the statutory obligation to facilitate the proper administration of the workers' compensation law, *see* 21 V.S.A. §602. The review process encompasses all of a compensation agreement's material elements, from correctly calculating the injured worker's average weekly wage and compensation rate to appropriately documenting the extent of his or her medical disability and permanent impairment. *See* Workers' Compensation Rule 17.0000. The statute does not exempt any agreements from the review and approval process; even compromise

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<sup>1</sup> Effective August 1, 2015, Rule 17.0000 has been re-codified as Rule 10.1820.

<sup>2</sup> Pursuant to 21 V.S.A. §601(20), the commissioner is empowered to delegate statutory authority to the Workers' Compensation Division as designee.

agreements negotiated in disputed cases are subject to it.<sup>3</sup> It is by any measuring stick one of the commissioner's critical functions.

7. The parties here both acknowledge that the commissioner has neither reviewed nor approved their signed compensation agreement. They further acknowledge that neither of them was induced to execute the agreement by fraudulent means or as a result of mutual mistake. True, both parties signed it, but none of the conditions necessary for its enforcement exist. It is not a binding contract under either statute or rule, therefore.
8. Claimant raises equitable arguments in support of his position that Defendant should be precluded from rescinding the Form 22 Agreement nevertheless. I acknowledge that rescission is often described as an equitable remedy, and that it should not be granted unless it is possible "to restore both parties to their condition before the contract." *Smith v. Munro*, 134 Vt. 417, 420 (1976) (citations omitted); *see also, Paradise Restaurant, Inc. v. Somerset Enterprises, Inc.*, 164 Vt. 405, 411 (1995) (rescission impractical due to difficulties inherent in attempting to put parties in *status quo ante*); *Caledonia Sand & Gravel Co. v. Joseph A. Bass Co.*, 121 Vt. 161, 164 (1995) (party seeking to rescind release contract must first restore the status quo).
9. Restoring the parties to the position they were in prior to executing the Form 22 Agreement is exactly what Defendant seeks to do here, and I cannot discern that any inequities will result if it is allowed to do so. Rescinding the agreement will leave each party free either to submit a negotiated permanency agreement for the commissioner's review and approval or to litigate the extent, if any, of Claimant's permanent impairment at formal hearing. Claimant will not be bound to a zero percent impairment rating any more than Defendant will be bound to an eight percent rating. Regardless of how the parties ultimately arrive at a determination of the benefits to be paid, in either case the commissioner's review and approval will be necessary, in accordance with both statute and rule.
10. I note in this case the very brief timeframe – a span of only one day – that existed between the time when Defendant submitted the parties' executed agreement for the commissioner's approval and the time when it first sought to rescind it. Were the timeframe a matter of weeks or months rather than days, restoring the status quo might be more difficult to accomplish, such that the equities between the parties might weigh differently. Even in that situation, however, I would be hard pressed to enforce an agreement absent the commissioner's prior review and approval. To allow one party to bind another to an agreement that had not been

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<sup>3</sup> Section 662(a) allows the commissioner to approve a compromise agreement only "when he or she is clearly of the opinion that the best interests of [the injured] employee or [his or her] dependents will be served thereby." Workers' Compensation Rule 17.6000 (recently re-codified as Rules 13.1500 and 13.1600) reiterates the review requirement and details the supporting documentation necessary for approval.

subjected to the scrutiny mandated by statute would impermissibly undermine the commissioner's essential role in the process.

11. I conclude as a matter of law that because the commissioner has neither reviewed nor approved the parties' previously submitted compensation agreement, it is not a binding and enforceable contract. I further conclude that rescinding the agreement will restore the parties to the position they occupied prior to its execution. I thus conclude as a matter of law that Defendant is entitled to rescission.

**ORDER:**

Claimant's Motion for Summary Judgment is hereby **DENIED**. Defendant's Motion for Summary Judgment is hereby **GRANTED**. The parties' previously executed Agreement for Permanent Partial or Permanent Total Disability Compensation (Form 22) is rescinded. The extent, if any, of the permanent impairment referable to Claimant's February 4, 2014 compensable work injury remains to be determined, whether by a properly reviewed and approved agreement or by formal hearing.

**DATED** at Montpelier, Vermont this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Anne M. Noonan  
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§670, 672.