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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1408-22

JOSE GONZALEZ,

Petitioner-Respondent,

v.

NEW JERSEY TRANSIT CORP.,

Respondent-Appellant.

Argued May 16, 2023 – Decided August 21, 2023

Before Judges Summers and Berdote Byrne.

On appeal from an interlocutory order of the Division of Workers' Compensation, Department of Labor and Workforce Development, Claim Petition No. 2016-7776.

Shealtiel Weinberg argued the cause for appellant (Brown & Connery, LLP, attorneys; Shealtiel Weinberg, on the briefs).

Law Offices of George G. Horiates, attorneys for respondent Jose Gonzalez, have not filed a brief.

Ryan J. Silver, Deputy Attorney General, argued the cause for amicus curiae New Jersey Department of

Labor and Workforce Development, Division of Workers' Compensation (Matthew J. Platkin, Attorney General, attorney; Donna Arons, Assistant Attorney General, of counsel; Ryan J. Silver, on the brief).

PER CURIAM

New Jersey Transit (NJT) appeals the order of a Judge of Workers' Compensation (JWC) denying a proposed N.J.S.A. 34:15-20 (Section 20) settlement with Jose Gonzalez. NJT contends the JWC erred in requiring live testimony from Gonzalez as a condition to approve the Section 20 settlement. We disagree and affirm. The JWC appropriately exercised her discretion under Section 20 and N.J.A.C. 12:235-3.13(e), determining the settlement could not be approved based on Gonzalez's affidavit because his live testimony was necessary to resolve issues concerning liability for his accident and the causal relationship between the accident and his injuries.

In January 2016, Gonzalez, a NJT bus driver, slipped and fell walking from a convenience store to his bus. He filed a workers' compensation claim petition, seeking benefits for injuries to his head, neck, shoulders, back, right wrist, and legs. NJT admitted Gonzalez's injuries were sustained in the course of his employment but did not admit the nature and extent of his injuries, leaving him to his proofs. NJT also reserved the right to invoke their N.J.S.A. 34:15-40 (Section 40) lien rights.

On November 30, 2021, NJT's counsel emailed a proposed Section 20 settlement to the JWC for approval. Under the settlement terms, NJT would pay Gonzalez \$200,000, including \$40,000 for his attorney's fees, \$600 for medical report reimbursement, and \$75 for stenographic service. The only contested issues left involved the causal relationship between his incident and his injuries. The email explained that Gonzalez's prior lower back and neck injuries, as well as his prior related workers' compensation awards, were not disclosed until after treatment for the injuries and settlement discussions commenced. Gonzalez had an existing neck injury that was settled in a 2014 workers' compensation award, with a finding of 2.5% permanent partial disability from a cervical sprain. As a result, NJT stated it was unable to address the causality issue in his pending claim "until after it had already provided medical treatment." NJT further acknowledged that, given Gonzalez's settlement had a \$250,000 Section 40 lien from his settlement with the convenience store, there was a dispute concerning "how much of the Section 40 lien has been compromised, whether it was compromised at all, and what credits are remaining."

According to Gonzalez, his Section 20 settlement provided him a:

net recovery [of] \$155,716.86. From that amount [he] paid back \$125,000 leaving [him] with \$26,271.86. The total lien was \$378,766.40 and with the \$125,000 reimbursed amount the balance would then be

\$253,766. Thus, the reasoning for a [S]ection 20 to afford a recovery for [him] as opposed to a zero dollar [via an Order Approving Settlement] recovery.

In Gonzalez's affidavit in support of the settlement, he admitted he had "significant" prior neck and back injuries but had not experienced difficulties for at least six years. He also attested that his attorney explained the settlement, its consequences, and his rights.

On December 10, the JWC emailed the parties, advising she would consider approving the proposed settlement but needed Gonzalez to testify. Gonzalez's counsel replied that Gonzalez would be available to testify.

On January 20, 2022, the JWC again emailed the parties reiterating that, to approve the settlement, she needed to hear Gonzalez's live testimony because he "does not have prior neck issues" making "the neck . . . definitely not appropriate for a Section 20." The JWC also stated an updated report was needed from independent medical examiner "Dr. Kerness [because he] has given perm[enant] numbers for both the neck and back." NJT counsel replied that Gonzalez had prior neck injuries from his 2014 claim as evidenced in an independent medical exam, and Dr. Kerness was not available due to retirement. NJT requested the JWC reconsider approving the settlement because it is beneficial to both parties, but NJT had no objection to Gonzalez testifying.

Gonzalez's counsel informed the JWC that he agreed with NJT's request and sought approval of the settlement.

At a pretrial conference on August 9, the JWC scheduled trial for November 1 after restating she would not approve the Section 20 settlement. In response, NJT filed a motion for leave to appeal with this court.

The JWC, in turn, issued an amplification of the August 9 conference, stating she did not "enter[] any findings, decision or order, either final or interlocutory," but she advised the parties she would not approve the Section 20 settlement because she could not decide whether "genuine issues as to jurisdiction, liability, causal relationship[,] or dependency" existed on the "facts presented." She therefore scheduled a November 1 trial where she "will listen to [Gonzalez]'s testimony."

We granted leave to appeal and summarily remanded by

direct[ing] the [JWC] . . . to issue a written order that either approves the proposed settlement to which the parties have agreed, or rejects the proposed settlement order. The [JWC] must also provide a[n] oral (transcribed) or written statement of reasons supporting the required order. The [JWC] must provide the parties with a copy of the order and the statement of reasons by no later than November 7, 2022. We do not retain jurisdiction.

Following a remand hearing, the JWC issued a timely order and a written decision rejecting the Section 20 settlement. The JWC ruled that

[u]nder a Section 20 settlement, [p]etitioner obtains a lump-sum one-time payment of benefits and the [p]etitioner forfeits his right to reopen the claim and seek additional benefits. Since a Section 20 settlement is the equivalent of a dismissal with prejudice, it requires additional scrutiny by the [JWC] to ensure that petitioner's interest are adequately protected and to prevent abuse.

The JWC found no basis to approve the settlement based on NJT's arguments concerning: (1) the nature and percentage of credit for Gonzalez's pre-existing injuries; (2) Gonzalez's "alleged failure to disclose his prior injuries to the doctors"; and (3) the Section 40 lien's impact on Gonzalez's net recovery from this settlement. She held both the credit for Gonzalez's pre-existing injuries and the Section 40 lien were not valid statutory reasons for a Section 20 resolution. Furthermore, the JWC determined both may be addressed by the workers' compensation court in a N.J.S.A. 34:15-22 order approving settlement, which would not dismiss the case with prejudice as with a Section 20 settlement.

The JWC found that Gonzalez's failure to disclose his prior accidents may create a causal relationship issue—a valid reason for a Section 20 resolution—but it was not an issue because NJT admitted Gonzalez's accident occurred during his employment. Additionally, the authorized treating and permanency

doctors found a causal relationship. As a result, Gonzalez's live testimony was necessary to determine his credibility regarding the impact of his pre-existing injuries; however, he never testified.

The JWC also held liability was not an issue because Gonzalez's doctor opined he was completely disabled from all gainful employment because of the accident, as supported by Gonzalez's affidavit. NJT's doctor also found a causal relationship between the accident and injury as well as a permanent disability.

The JWC thus determined the matter was inappropriate for Section 20 settlement because, based on the documents presented, there were no issues of "jurisdiction, dependency, liability or causal relationship." She allowed the parties to renew their request if live testimony was obtained from Gonzalez or the medical experts. This would enable her to make credibility determinations regarding "[Gonzalez's] testimony and the sincerity of his surrender of rights, the merits of the controversy that would render the matter appropriate under [Section 20], the potential of liens or medical debt that would fall upon [Gonzalez], or the scope of the future rights being surrendered."

NJT sought leave to appeal the order. We granted the motion and later granted the New Jersey Department of Labor and Workforce, Division of Workers' Compensation amicus participation.

Before us, NJT argues the JWC abused her discretion by refusing to approve a settlement consistent with Section 20 and the caselaw, specifically Univ. of Mass. Mem'l Med. Ctr., Inc. v. Christodoulou, 180 N.J. 334 (2004), Kibble v. Weeks Dredging & Constr. Co., 161 N.J. 178 (1999), and Sperling v. Bd. of Rev., 301 N.J. Super. 1 (App. Div. 1997). Her alleged abuse stems from the fact that "the nature of the inquiry . . . in determining fairness must be something less than a trial," and the scope of that inquiry must be confined to the record. NJT asserts that during the COVID-19 pandemic—when settlement approval was sought—JWCs consistently approved Section 20 settlements based on a petitioner's affidavit and a waiver of appearances.

NJT asserts Christodoulou, Kibble, and Sperling indicate settlements should be encouraged to allow parties to avoid contentious issues; demonstrate a proposed Section 20 settlement can be approved where "there is an undisputed relationship between the injury, resulting treatment, and work"; and signal Section 20 only requires "a form, representation by counsel, and a judicial determination of fairness and justice under all the circumstances." NJT highlights that Christodoulou states Section 20's purpose is to "avoid a hearing on contested issues," which is contrary to the JWC's decision to make approval of a Section 20 settlement subject to Gonzalez's testimony. 180 N.J. at 348.

Furthermore, NJT asserts the JWC's discretion is limited to "whether [Gonzalez] truly understands what is happening at the hearing, understands what rights are lost by accepting the proposed settlement, and has received adequate counsel in making those determinations."

NJT challenges the JWC's arguments rejecting the Section 20 settlement. First, NJT contends N.J.S.A. 34:15-12(d) "frames credits for prior functional loss as a liability issue," so the JWC's determination that the nature and extent of Gonzalez's pre-existing injuries was not a basis for Section 20 is incorrect. Second, the JWC made a similar error in stating an issue with a Section 40 lien is not a basis for Section 20 settlement when Section 40's heading is "liability of third party," making it clear that a Section 40 dispute inherently involves liability. Third, the JWC's inability to make a credibility determination without hearing Gonzalez's testimony goes against the parties' intent to avoid a fraud issue at trial and "[t]here is no plausible, practical way to have the employee testify related to truthfulness without the matter being fully tried." Fourth, the JWC's finding that there are no issues when the parties told her issues exist is unreasonable and raises the due process concern of making a factual determination without trial. For these reasons, NJT argues the JWC improperly

"focused entirely on the validity of the disputes" instead of making a fairness determination.

NJT asks us to clarify the JWC's settlement inquiry and limit it to a petitioner's understanding and acceptance of the settlement, arguing that, if a petitioner's affidavit "reflects competency and understanding," the JWC should approve. NJT also notes this court can order the JWC to approve the settlement and, if we make the fairness determination based on Gonzalez's affidavit, we "would clarify a long-standing issue" regarding Section 20 approval standards, which differ amongst JWCs.

We conclude there is no merit to NJT's arguments. Our deferential standard of review and the JWC's statutory authority support affirmance of her order rejecting the Section 20 settlement.

An appellate court's review of a JWC's findings is limited. The Court recognized in Close v. Kordulak Bros., 44 N.J. 589, 599 (1965), that the appellate standard of review is the same as that applied "in any nonjury case." Meaning, an appellate court must consider whether the judge's findings "'could reasonably have been reached on sufficient credible evidence present in the record,' . . . with due regard to" the judge's opportunity to hear the witnesses and "judge . . . their credibility." Ibid. (quoting State v. Johnson, 42 N.J. 146, 162

(1964)). Consequently, "[d]eference must be accorded [to] the [JWC's] factual findings and legal determinations . . . unless they are 'manifestly unsupported by or inconsistent with competent relevant and reasonably credible evidence as to offend the interests of justice.'" Lindquist v. City of Jersey City Fire Dep't, 175 N.J. 244, 262 (2003) (quoting Perez v. Monmouth Cable Vision, 278 N.J. Super. 275, 282 (App. Div. 1994)).

In relevant part, Section 20 states:

[W]hen it shall appear that the issue or issues involve the question of jurisdiction, liability, causal relationship or dependency of the petitioner under this chapter, and the petitioner and the respondent are desirous of entering into a lump-sum settlement of the controversy, a judge of compensation may with the consent of the parties, after considering the testimony of the petitioner and other witnesses, together with any stipulation of the parties, and after such judge of compensation has determined that such settlement is fair and just under all the circumstances, enter "an order approving settlement." Such settlement, when so approved, notwithstanding any other provisions of this chapter, shall have the force and effect of a dismissal of the claim petition and shall be final and conclusive upon the employee and the employee's dependents, and shall be a complete surrender of any right to compensation or other benefits arising out of such claim under the statute.

[N.J.S.A. 34:15-20 (emphasis added).]

"The applicable regulations require that the terms of the settlement be entered on a prescribed form, that the employee, employer and compensation judge sign the form, and that the employee 'be fully advised of all rights.'" Kibble, 161 N.J. at 188 (citing N.J.A.C. 12:235-6.14).

"A petitioner's acceptance of a Section 20 settlement . . . shall occur on the record of the . . . settlement proceeding unless the judge . . . determines that sufficient circumstances preclude the appearance of the petitioner In such case, an affidavit . . . shall be submitted."

[N.J.A.C. 12:235-3.13(e).]

We agree with amicus that "Section 20 permits settlements in limited circumstances and only after [JWCs] have . . . the opportunity to voir dire the petitioner and determine whether all of the attendant circumstances – not just petitioner's understanding – warrant approval." This is consistent with the enactment of Section 20 to "prevent parties from entering into 'surreptitiously negotiated' settlements whereby the worker would agree to dismiss his or her claim voluntarily and with prejudice in exchange for a subsequent payment from the employer." Kibble, 161 N.J. at 187. Our Legislature has given the JWC oversight regarding approval of settlements—including hearing of in-person petitioner testimony—to ensure compliance with Section 20. See Brown v. Gen. Aniline & Film Corp., 127 N.J. Super. 93, 94-95 (App. Div. 1974).

Here, the JWC properly exercised her discretion in requiring Gonzalez to testify before she approved the Section 20 settlement. Section 20 requires a JWC to consider a petitioner's live testimony unless they find "sufficient circumstances preclude the appearance of the petitioner[.]" N.J.A.C. 12:235-3.13(e); see N.J.S.A. 34:15-20. While the Division issued guidance that Section 20 hearings can be conducted virtually due to COVID-19, it only suggested telephonic or video conferences. See Div. of Workers' Comp., Dep't of Lab. & Workforce Dev., Notice to the Bar (July 29, 2021) [hereinafter "Notice to the Bar"]. As such, the decision to approve a Section 20 settlement based solely on an affidavit due to COVID-19 remains within the JWC's discretion.

The JWC validly exercised her power to request Gonzalez's live testimony as a necessary part of her determination. COVID-19 was not a sufficient reason to prevent Gonzalez's live testimony given the availability of telephonic and video conferencing and the parties did not pose any reasonable basis for him not to testify. See Notice to the Bar. In fact, the parties repeatedly indicated there was no problem with Gonzalez testifying. Furthermore, the JWC indicated she would allow the parties to renew their request for Section 20 settlement after Gonzalez or their medical experts testify.

The JWC's finding that there are no issues involving jurisdiction, liability, causal relationship, or dependency is also entitled to deference. It is undisputed that no issues exist concerning jurisdiction and dependency.

Contrary to NJT's argument, liability and causal relationship are not at issue, either. The Section 40 lien credits and N.J.S.A. 34:15-12(d) credits for prior injuries impact the extent of NJT's liability, not whether they are liable or not. There was no evidence the Section 40 lien or prior injury credits would completely eliminate NJT's liability. The Section 40 lien was not greater than the total workers' compensation paid, and NJT's medical expert found Gonzalez's disability greater than the previous workers' compensation award, so NJT would still be liable. Furthermore, the JWC made factual findings that liability is not at issue. Gonzalez's doctor found he was completely disabled from the accident, which is corroborated by Gonzalez's affidavit, and Gonzalez attested that he had not experienced any difficulties for six years prior, which is undisputed.

A causal relationship also clearly existed because NJT admitted Gonzalez's accident occurred in the course of his employment, and the JWC made a factual finding that both parties' doctors concluded there was a relationship between the accident and the injury.

NJT attempts to undermine the credibility of the medical experts and Gonzalez's affidavit by arguing he failed to disclose his prior injuries to the doctors before his examinations. Given the lack of Gonzalez's testimony, the JWC could only make credibility assessments on the record, including Gonzalez's affidavit that he had significant prior injuries. This further justifies the JWC's decision requiring Gonzalez's live testimony. Therefore, the JWC's legal and factual findings are based on substantial credible evidence and entitled to deference. See Lindquist, 175 N.J. at 262.

In conclusion, the JWC's did not abuse her discretion in rejecting the Section 20 settlement without Gonzalez's live testimony. Her decision is justified under the statute and regulations as well as supported by credible evidence in the record. To the extent we have not addressed any arguments raised by NJT, they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION