

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Eric Wayne Murphy,	:
Petitioner	:
	:
v.	: No. 1893 C.D. 2014
	: Submitted: March 6, 2015
Workers' Compensation Appeal	:
Board (Roadway Express),	:
Respondent	:

BEFORE: HONORABLE DAN PELLEGRINI, President Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
PRESIDENT JUDGE PELLEGRINI                      FILED: March 30, 2015

Eric Wayne Murphy (Claimant) petitions *pro se* for review of an order of the Workers' Compensation Appeal Board (Board) affirming the decision of a Workers' Compensation Judge (WCJ) denying Claimant's Petition to Set Aside Final Receipt (Set Aside Petition) with regard to an Agreement for Compensation (Agreement) Claimant entered with YRC Worldwide, Inc./Roadway Express (Employer). For the reasons that follow, we affirm.

**I.**

Following Claimant's work injury in May 2009, Employer initially issued a Notice of Workers' Compensation Denial (Denial) in June 2009 after

which Claimant filed a Claim Petition for Workers' Compensation Benefits (Claim Petition). Subsequently, the parties entered into the Agreement pursuant to which they agreed that Claimant was entitled to indemnity benefits for the period beginning May 22, 2009, and terminating November 19, 2009, subject to a credit for any unemployment compensation benefits received, and agreeing that Claimant was fully recovered and able to return to work without restriction as of November 19, 2009. The Agreement further provided for Employer's payment of enumerated medical expenses. Based on the Agreement, a WCJ granted the Claim Petition by order dated May 21, 2010, and incorporated the Agreement into the decision.

On October 30, 2013, Claimant filed his Petition to Set Aside. At a hearing before the WCJ, he argued that the Agreement is void under the Pennsylvania Workers' Compensation Act (Act)<sup>1</sup> because it had not been filed with the Bureau of Workers' Compensation (Bureau), and that it is invalid because it was not signed by Employer's representative. In support of his Petition to Set Aside, Claimant submitted the initial Denial, a letter to Claimant advising that despite the Denial, Employer would accept the claim for medical benefits, and a Statement of Wages. He also offered the WCJ's decision granting his Claim Petition and a Bureau letter dated December 6, 2013, certifying that the Agreement was not on file.

In opposition to the Petition to Set Aside, Employer offered the Agreement and argued that the Claim Petition was barred under Section 434 of the

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<sup>1</sup> Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §§1-1041.4, 2501-2708.

Act<sup>2</sup> because it was filed more than three years after Claimant's last compensation payment.

In April 2014, the WCJ denied Claimant's Petition to Set Aside, recognizing that although the Agreement was not on file with the Bureau, it was executed by Claimant and accepted by the WCJ, who incorporated the Agreement into his decision circulated May 21, 2010. Further, the WCJ found that Claimant failed to demonstrate that he was prejudiced as a result of the Agreement not technically being filed with the Bureau since Claimant did not allege that Employer failed to provide him the benefits owed and since the Agreement had the same effect whether filed with the Bureau or only incorporated into the WCJ's decision. As such, the WCJ held that Claimant failed to satisfy his burden of proving that the Agreement should be set aside for material error or fraud and he dismissed the Petition.<sup>3</sup>

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<sup>2</sup> Section 434 of the Act states:

A final receipt, given by an employee or dependent entitled to compensation under a compensation agreement notice or award, shall be prima facie evidence of the termination of the employer's liability to pay compensation under such agreement notice or award: Provided, however, That a referee designated by the department may, at any time within two years from the date to which payments have been made, set aside a final receipt, upon petition filed with the department, or on the department's own motion, if it be shown that all disability due to the injury in fact had not terminated....

77 P.S. §1001.

<sup>3</sup> The WCJ noted that because Employer failed to present any evidence regarding when its last payment was made to Claimant, the WCJ was unable to discern whether the statute of  
**(Footnote continued on next page...)**

On appeal to the Board, Claimant argued that the WCJ erred in finding that Claimant was not prejudiced by Employer's failure to file the Agreement or by denying the Petition to Set Aside. Emphasizing that the Petition to Set Aside "is a belated attack on [the WCJ]'s order granting the Claim Petition," the Board found no error. (9/8/14 Board Opinion at 3). Specifically, the Board explained that pursuant to Section 423(a) of the Act, an aggrieved party may take an appeal from a WCJ's adjudication *within twenty days* after notice of the decision is served upon him.<sup>4</sup> Finding that Claimant failed to appeal within 20 days from the May 21, 2010 decision granting the Claim Petition based upon the

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**(continued...)**

limitations under Section 434 of the Act, 77 P.S. §1001, expired and, thus, whether Claimant's Petition to Set Aside was time-barred.

<sup>4</sup> Section 423(a) provides:

Any party in interest *may, within twenty days after notice of a workers' compensation judge's adjudication shall have been served upon him*, take an appeal to the board on the ground: (1) that the adjudication is not in conformity with the terms of this act, or that the workers' compensation judge committed any other error of law; (2) that the findings of fact and adjudication was unwarranted by sufficient, competent evidence or was procured by fraud, coercion, or other improper conduct of any party in interest. The board may, upon cause shown, extend the time provided in this article for taking such appeal or for the filing of an answer or other pleading.

77 P.S. §853 (emphasis added).

Agreement, the Board determined that Claimant could not attack the order by way of a Petition to Set Aside and affirmed the WCJ's ruling.<sup>5</sup>

## II.

Before this Court,<sup>6</sup> Claimant does not contend that the Board erred in dismissing his appeal for failing to comply with the 20-day limit for appeals to the Board, but only that the Agreement is invalid under Section 449(b) of the Act because it was not signed by the Employer's representative or filed with the Bureau.<sup>7</sup> However, because Claimant's appeal was not filed until October 2013,

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<sup>5</sup> The Board declined to rule on Claimant's argument that Employer improperly suspended indemnity benefits without a showing of job availability and that Employer violated the Act when it failed to issue an appropriate Bureau document within 21 days of notice of an injury, determining that Claimant failed to raise these issues before the WCJ and, therefore, waived them.

<sup>6</sup> Our scope of review in an appeal from a decision of the Workers' Compensation Appeal Board is limited to determining whether necessary findings of fact are supported by substantial evidence, whether an error of law was committed, or whether constitutional rights were violated. *Ward v. Workers' Compensation Appeal Board (City of Philadelphia)*, 966 A.2d 1159, 1162 n.4 (Pa. Cmwlth.), *appeal denied*, 982 A.2d 1229 (Pa. 2009).

<sup>7</sup> Section 449(b) of the Act provides:

*Upon or after filing a petition, the employer or insurer may submit the proposed compromise and release by stipulation signed by both parties to the workers' compensation judge for approval. The workers' compensation judge shall consider the petition and the proposed agreement in open hearing and shall render a decision. The workers' compensation judge shall not approve any compromise and release agreement unless he first determines that the claimant understands the full legal significance of the agreement. The agreement must be explicit with regard to the payment, if any, of reasonable, necessary and related medical expenses. Hearings on the issue of a compromise and release shall*

**(Footnote continued on next page...)**

over three years after the decision it seeks to challenge was issued, the Board did not err in finding Claimant's appeal untimely.

Accordingly, we affirm the Board's decision.<sup>8</sup>

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DAN PELLEGRINI, President Judge

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**(continued...)**

be expedited by the department, and the decision shall be issued within thirty days.

77 P.S. §1000.5(b) (emphasis added).

<sup>8</sup> Claimant also asserts that his benefits should be reinstated because Employer fraudulently misrepresented that Claimant returned to work on November 19, 2009, and that Employer did not offer him work after it accepted his claim. However, Claimant waived these issues by failing to present them before the WCJ and, therefore, we will not address them. *See Wheeler v. Workers' Compensation Appeal Board (Reading Hospital & Medical Center)*, 829 A.2d 730, 734 (Pa. Cmwlth. 2003) (explaining that the policy that "an issue is waived unless it is preserved at every stage of the proceeding" promotes the "integrity, efficiency, and orderly administration of the workmen's compensation scheme of redress for work-related injury" (internal quotation marks and citation omitted)). Likewise, Claimant's argument that the Agreement should be stricken from the record is deemed waived as Employer submitted the Agreement at the hearing before the WCJ, and Claimant failed to lodge an objection to it until now. *See In re Petition of Viola*, 838 A.2d 21, 29 (Pa. Cmwlth. 2003).

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**ORDER**

AND NOW, this 30<sup>th</sup> day of March, 2015, the order of the Workers' Compensation Appeal Board dated September 8, 2014, at No. A14-0392, is affirmed.

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DAN PELLEGRINI, President Judge