Enforceability of Mediated Settlement Agreements

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Do you want to close your file once a claim settles at mediation?

Not so fast. Even if the parties execute a Mediated Settlement Agreement, the parties will then draft a more formal and detailed Final Compromise Settlement Agreement (FCSA). So what happens when a claimant executes a Mediated Settlement Agreement then refuses to execute an FCSA?

Mediated Settlement Agreement vs. Final Compromise Settlement Agreement

A Mediated Settlement Agreement is a standard form agreement that is intended to be a quick memorialization of material settlement terms at the conclusion of mediation. On the other hand, an FCSA is a more detailed agreement that provides procedural history, medical summary, and legal contentions of the parties. The FCSA also addresses additional issues like Medicare, Medicaid, Social Security, and third-party liens. The FCSA is preferred because it allows for more detail, thus less ambiguity.

If a claimant has executed a Mediated Settlement Agreement but refuses to execute an FCSA, then the defendants have the option to submit the executed Mediated Settlement Agreement to the Commission for approval. In order for the Commission to approve a duly executed Mediated Settlement Agreement, it must be (1) enforceable and (2) fair and just. To be enforceable, the Mediated Settlement Agreement must contain all the necessary elements required by statute. To be fair and just, the Commission must consider the merits of the claim and determine that the agreement is in the best interest of all parties.

Enforceable

To be enforceable, a Mediated Settlement Agreement must satisfy the requirements of Rule 502(2)-(3) of the *Workers' Compensation Rules of the Industrial Commission*. In summary, Rule 502(2) requires basic information of the claim, such as: whether the claim is accepted or denied, which party is responsible for unpaid medical expenses, whether the claimant has returned to work, that the claimant knowingly waives the right to further benefits under the Act, and that no other rights than those arising under the *Workers' Compensation Act* are compromised or released. Rule 502(3) requires that: the material medical, vocational and rehabilitation reports are submitted with the agreement, the agreement is executed by the parties and their attorneys, a list of known medical expenses if the claim was denied, a determination of who will pay the unpaid medical expenses, and a finding that the positions of the parties are reasonable as to the payment of unpaid medical expenses. Fortunately, the Commission provides a standardized Mediated Settlement Agreement form which addresses all of the requirements of Rule 502(2)-(3). So long as the parties complete all sections of the standardized Mediated Settlement Agreement form, the agreement will be enforceable. Nonetheless, it also must be "fair and just."

Fair and Just

In order for an executed Mediated Settlement Agreeement to be approved, the agreement must comply with N.C. Gen. Stat. § 97-17 and Rule 502. Section 97-17 and Rule 502(1) provide that the Commission will only approve settlement agreements that are "fair and just" and in the best interest of all parties.

The Commission is required to undertake a "full investigation" to determine whether a settlement agreement is "fair and just." A full investigation requires that the Commission determines, not merely assumes, that the claimant is aware of other remedies available to him or her under the Act. If the claimant agrees to a payment on the rating and is not aware that he or she may be entitled to permanent disability, the agreement is not fair and just. Alternatively, the Commission will also consider factors such as whether the claimant is represented by counsel, how much of the counselor's practice is dedicated to workers' compensation, and whether the counselor assisted the claimant in the decision-making process.

The determination of whether an agreement is fair and just is subjective by nature, and neither the *Workers' Compensation Act* or *Rules of the Commission* provides specific procedures or guidelines to make such a determination. Even though the Commission is not making a determination on compensability, the Commission must consider the validity of the claimant's claim and the possibility that the claimant could receive zero compensation if he or she proceeded to a hearing. The Commission will also consider the medical records, outstanding medical bills, and other evidence that is available to the parties at the time of settlement. The Commission should not consider issues unrelated to workers' compensation such as child support liens. At the end of the day, the Commission has the discretion to determine whether an agreement is fair and just, and thus whether the agreement should be approved.

Example Case - Malloy

Malloy v. Davis Mechanical, Inc., 720 S.E.2d 739 (2011) is a good example of what the Commission will approve. This was a denied claim where the plaintiff disturbed a hornet's nest, was stung 29 times, and was hospitalized for seven days. The plaintiff incurred approximately $52,000 in medical expenses. His insurance paid approximately $40,000, leaving outstanding medical expenses of $11,525. The parties executed an Mediated Settlement Agreement for $10,000, but the plaintiff refused to execute an FCSA. The defendants filed a hearing request to enforce the Mediated Settlement Agreement, and the Commission approved the agreement. The Court of Appeals affirmed the Commission's decision, noting that the agreement was fair and just to all parties even though the settlement amount was less than the outstanding medical expenses.

Since a duly executed Mediated Settlement Agreement is enforceable, it is best to include as many details as possible when drafting the agreement at mediation. The more details in the Mediated Settlement Agreement, the less the claimant, or claimant's attorney, can object to upon receipt of the FCSA. The Mediated Settlement Agreement should be detailed enough so that if the claimant refuses to execute an FCSA, you would be satisfied if the Commission approves the Mediated Settlement Agreement.

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