



[Cite as *Johns v. Ohio Bur. of Workers' Comp.*, 2002-Ohio-425.]

A BWC claims service specialist received Julia's C-240 form and forwarded it to the following members of the local office settlement committee: Sandy Hooper, Service Office Manager; Barb Schwarz, Team Leader; and Dave Szuch, BWC Attorney. Pursuant to BWC policy, settlements in excess of \$25,000 must be unanimously approved by a three-member settlement committee consisting of the service office manager, the team leader and a BWC attorney. The service office manager has settlement authority to approve settlements between \$15,000 and \$25,000.

The committee evaluated Julia's C-240 application and rejected the \$60,000 request. However, the committee offered Julia \$20,000 to settle her claim. On October 20, 1998, Julia rejected the \$20,000 offer and made a counteroffer. On October 21, 1998, Ann Getzinger, BWC Claims Service Specialist, took the counteroffer to Barb Schwarz, who gave verbal authorization to Getzinger to negotiate a settlement for \$22,000.

On October 20, 1998, Getzinger sent the \$22,000 authorization to Julia's counsel via a facsimile transmission of BWC Form C-241, Amended Settlement Agreement and Release.

On October 22, 1998, Julia accepted the \$22,000 settlement offer and executed the C-241 form. On October 23, 1998, Getzinger received the executed form and immediately forwarded it to the committee members for signature; however, on October 23, 1998, only two members of the settlement committee were available: Barb Schwarz and Dave Szuch, each of whom signed the amended settlement agreement. The service office manager, Sandy Hooper, was not available and did not sign the agreement until October 26, 1998. Julia died on October 24, 1998. The court

takes judicial notice that October 23, 1998, was a Friday and October 26, 1998, was a Monday.

After the service office manager signed the settlement agreement, an entry was issued on October 26, 1998, approving the settlement. On November 30, 1998, defendant issued Julia a \$22,000 lump sum settlement warrant. However, upon learning of her death, defendant refused to approve the disbursement of Julia's settlement proceeds to her husband. Plaintiff now brings this action to recover the \$22,000 settlement.

R.C. 4123.65, in pertinent part, states:

(A) A state fund employer or the employee of such an employer may file an application with the administrator of workers' compensation for approval of a final settlement of a claim under this chapter. The application shall include the settlement agreement, be signed by the claimant and employer, and clearly set forth the circumstances by reason of which the proposed settlement is deemed desirable and that the parties agree to the terms of the settlement agreement provided that the agreement need not be signed by the employer if the employer is no longer doing business in Ohio. \*\*\*

(B) Except as provided in divisions (C) and (D) of this section, a settlement agreed to under this section is binding upon all parties thereto and as to items, injuries, and occupational diseases to which the settlement applies.

(C) No settlement agreed to under division (A) of this section or agreed to by a self-insuring employer and the self-insuring employer's employee shall take effect until

thirty days after the administrator approves the settlement for state fund employees and employers, or after the self-insuring employer and employee sign the final settlement agreement. During the thirty-day period, the employer, employee, or administrator, for state fund settlements, and the employer or employee, for self-insuring settlements, may withdraw consent to the settlement by an employer providing written notice to the employer's employee and the administrator or by an employee providing written notice to the employee's employer and the administrator, or by the administrator providing written notice to the state fund employer and employee.

Ohio Adm.Code 4123-5-21, in pertinent part, states:

(A) When a claimant dies, action on any application filed by the claimant, and pending before the bureau or the industrial commission at the time of his death, is abated by claimant's death. \*\*\*

Plaintiff argues that the requirements of R.C. 4123.65 concerning the settlement of workers' compensation claims were substantially fulfilled at the time of Julia's death, thus negating any abatement pursuant to Ohio Adm.Code 4123-5-21(A). Plaintiff maintains that his wife's death did not abate the settlement, but rather, that the settlement had been approved by all necessary parties and that, therefore, there was no "application" pending. Defendant counters that Julia's claims abated upon her death, pursuant to Ohio Adm.Code 4123-5-21.

The court finds the abatement provisions of Ohio Adm.Code 4123-5-21 to be inapplicable in this instance. See *Estate of Orecny v. Ford Motor Co.* (1996), 109 Ohio App.3d 462 (Where a

settlement agreement was final, but not yet paid, the abatement regulation did not apply). In the instant action, the provisions of Ohio Adm.Code 4123-5-21 do not require abatement of Julia's claims, as a settlement agreement was reached prior to her death.

Upon reaching a settlement, there was no longer an "application" pending. The settlement was approved and ready for signature, and no further review or approval was required. The claim had been settled and the obtaining of signatures was a mere formality. Additionally, defendant did not withdraw its consent to the settlement during the thirty-day waiting period. The court finds that plaintiff is entitled to the proceeds of the settlement agreement reached between defendant and plaintiff's wife.

Upon review of the evidence and the law, and for the foregoing reasons, judgment shall be rendered in favor of plaintiff.

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J. WARREN BETTIS  
Judge

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IN THE COURT OF CLAIMS OF OHIO

HAROLD JOHNS, etc. :  
Plaintiff : CASE NO. 2000-01155  
v. : JUDGMENT ENTRY  
BUREAU OF WORKERS' : Judge J. Warren Bettis  
COMPENSATION :  
Defendant :  
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Based upon the evidence and for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of plaintiff in the amount of \$22,025, which includes the \$25 filing fee paid by plaintiff. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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J. WARREN BETTIS  
Judge

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