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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

TRUE VALUE COMPANY, *Petitioner Employer,*

ESIS/ACE USA, *Petitioner Carrier,*

v.

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent,*

GERALDINE VASQUEZ, *Respondent Employee.*

No. 1 CA-IC 16-0003
FILED 10-4-2016

Special Action - Industrial Commission

ICA Claim No. 20143-170005
Carrier Claim No. 73084943039619
Deborah A. Nye, Administrative Law Judge

AWARD SET ASIDE

COUNSEL

Lundmark, Barberich, LaMont & Slavin, P.C., Phoenix
By Kirk A. Barberich
Counsel for Petitioners Employer and Carrier

Industrial Commission of Arizona, Phoenix
By Jason M. Porter
Counsel for Respondent

Geraldine Vasquez, Kingman
Respondent Employee

MEMORANDUM DECISION

Judge Samuel A. Thumma delivered the decision of the Court, in which Acting Presiding Judge Kent E. Cattani and Judge Lawrence F. Winthrop joined.

T H U M M A, Judge:

¶1 This is a special action review of an Industrial Commission of Arizona (ICA) award and decision upon review for a compensable claim. The dispositive issue is whether the administrative law judge (ALJ) erred by failing to enforce the parties' oral settlement agreement. Because the evidence shows the parties reached a binding settlement agreement, the award is set aside.

PROCEDURAL AND FACTUAL HISTORY

¶2 Claimant Geraldine Vasquez worked for many years in a distribution warehouse for petitioner employer True Value Company. Her job involved frequent fast walking. Vasquez claimed that, as a result, she developed aching and tightness in her right foot. Vasquez filed a workers' compensation claim, which was denied for benefits, and she timely requested an ICA hearing.

¶3 Before the hearing, counsel for True Value and petitioner carrier ESIS/ACE USA (collectively Petitioners) sent an email to Vasquez' counsel raising possible settlement. After conferring with Vasquez, her counsel emailed Petitioners' counsel to advise that he had authority to settle non-compensability for \$5,000. The next day, counsel for Petitioners called and accepted the offer of \$5,000 for non-compensability. When her attorney told her of this acceptance, Vasquez indicated she changed her mind and wanted to proceed to a hearing. Her attorney, in turn, told Petitioners' counsel of Vasquez' new desire not to settle and then withdrew as counsel for her.

¶4 Petitioners filed a motion to enforce settlement agreement, and the ALJ held three hearings and heard testimony from, among others, Vasquez and her former attorney. As relevant here, after Vasquez' former

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attorney recounted the settlement proposals and history, he was asked the following question by Petitioners' counsel:

Q. So it's your understanding that the case settled for \$5,000 in exchange for her claims, her workers' compensation claims only remained denied and noncompensable?

A. Correct.

¶5 The ALJ then asked a clarifying question:

Q. So I'm just honing in on this conversation with [Petitioners' counsel] at the time you accepted before you knew [Vasquez] was going to call you again and change her mind. *Was it your intent to bind her to that agreement, or was your intent to bind it once the written agreement was presented?*

A. *No, it wasn't to bind anything, really. I just said we don't, this client and I, she keeps changing her mind, and so I've got an offer that was accepted and she's now revoking it, I suppose. I left it in his corner whether he wanted to consider that binding or not. And I left that for he and his client to work out, but I had no intent to bind her, especially when she had said in the last conversation she had changed her mind.*

¶6 Following the hearings, the ALJ found the oral settlement agreement was unenforceable:

Although it is clear that there was an offer, an acceptance and consideration agreed upon between the two attorneys, I find that their agreement was not a binding oral contract *because applicant's attorney did not intend to be bound by the oral agreement.* In the absence of intent, I conclude that counsel's oral agreement is not enforceable, and that applicant may proceed with evidence about the compensability of her claim.

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The ALJ then entered an award for a compensable claim. Petitioners timely requested administrative review, and the ALJ summarily affirmed the award. Petitioners then timely sought review by this court, which has jurisdiction pursuant to Arizona Revised Statutes (“A.R.S.”) sections 12-120.21(A)(2) (2016), 23-951(A) (2016), and Arizona Rules of Procedure for Special Actions 10 (2016).¹

DISCUSSION

¶7 In reviewing findings and awards of the ICA, this court defers to the ALJ’s factual findings, viewing the evidence in the light most favorable to upholding the award, but reviewing questions of law de novo. *Young v. Indus. Comm’n*, 204 Ariz. 267, 270 ¶ 14 (App. 2003); *Lovitch v. Indus. Comm’n*, 202 Ariz. 102, 105 ¶ 16 (App. 2002). Vasquez did not file an answering brief, which “generally constitutes a confession of error.” *Gibbons v. Indus. Comm’n*, 197 Ariz. 108, 111 ¶ 8 (App. 1999). In addition, Petitioners’ argument on the merits shows that, on this record, the award should be vacated.

¶8 Petitioners argue the ALJ erred by failing to enforce the parties’ oral settlement agreement. The enforceability of a settlement agreement in a workers’ compensation claim is determined by applying contract principles. *Tabler v. Indus. Comm’n*, 202 Ariz. 518, 520 ¶ 6 (App. 2002). There is no rule that such settlement agreements must be in writing, only that they be approved by the ICA. *Id.* at 521 ¶ 10 (citing authority). As relevant here, an enforceable settlement agreement requires an offer, acceptance and consideration. *Id.* at 520-21 ¶ 8 (citations omitted).² “The parties must intend to be bound.” *Id.* at 521 ¶ 8 (citing *Rogus v. Lords*, 166 Ariz. 600, 602 (App. 1991)).

¶9 The award found that there was an offer, acceptance and consideration. The award, concluded, however, that the agreement was unenforceable due to the lack of intent of Vasquez’ counsel to bind Vasquez. The lack of an intent to be bound, however, must be manifest to the other party or parties involved. As noted in *Tabler*, the parties’ intent is assessed based on objective evidence and “not the hidden intent of the parties.” 202

¹ Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

² As a contract, an enforceable settlement agreement also must contain reasonable certainty of terms, a requirement not at issue here. *See, e.g., Schade v. Diethrich*, 158 Ariz. 1, 7-9 (1998).

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Ariz. at 521 ¶ 13 (citations omitted). As applied, the record does not show that Vasquez' counsel, in making an unconditional offer to settle that was accepted by Petitioners before being revoked or expiring, expressed to Petitioners that Vasquez did not intend to be bound or that counsel's statements were not intended to bind Vasquez to the terms of the offer.

¶10 Accordingly, the issue is whether Vasquez and Petitioners mutually assented to the essential terms of the oral settlement agreement. In that regard, Vasquez gave her attorney explicit authority to settle the disputed compensability of her workers' compensation claim for \$4,000. Her attorney, at her direction, contacted Petitioner's counsel and made an unequivocal, unconditional offer of \$5,000 (the offer) to settle the disputed compensability issue (the consideration). True Value agreed (the acceptance) to pay the \$5,000 (the corresponding consideration). Thus, there was an offer, acceptance and valid consideration. Accordingly, and notwithstanding Vasquez' purported intent to the contrary, which was never disclosed to Petitioners, the parties through their authorized agents manifested mutual assent and an objective intent to be bound by the oral agreement. As a result, the oral settlement agreement was enforceable.

CONCLUSION

¶11 The ALJ's award is set aside.



AMY M. WOOD • Clerk of the Court
FILED: AA