

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

IN RE: BRADLEY GOULD) **DOCKET NO. 16 S0003**
)
CLAIM NOS. SE-00329, W-744589,)
W-555760, SE-38150 & SE-00325) **DECISION AND ORDER**

APPEARANCES:

Claimant, Bradley Gould, by Staton Silber P.S., per Robert A. Silber
Self-Insured Employer, City of Renton, by Thomas Hall & Associates, per Ryan S. Miller

A Claim Resolution Structured Settlement Agreement was submitted to the Board of Industrial Insurance Appeals for approval on January 5, 2016, as provided by RCW 51.04.063. The agreement is **REJECTED**.

DECISION

This matter is before the Board for review and decision on an application for approval of a Claim Resolution Structured Settlement Agreement. RCW 51.04.063(3) requires that we approve the agreement unless any of the following circumstances are present:

- (a) The agreement was not entered into knowingly and willingly;
- (b) The agreement does not meet the requirements of a claim resolution structured settlement agreement;
- (c) The agreement is the result of a material misrepresentation of law or fact;
- (d) The agreement is the result of harassment or coercion; or
- (e) The agreement is unreasonable as a matter of law.

The Board must reject an agreement that fails to meet the requirements of a Claim Resolution Structured Settlement Agreement. This agreement fails to meet two of those requirements. The periodic payments exceed the maximum amount allowed by law, and there is no final and binding claim allowance order in two of the five claims subject to the agreement.

Periodic payments in a Claim Resolution Structured Settlement Agreement may be no less than 25 percent of the state's average monthly wage (AMW), and no more than 150 percent of the AMW.¹ Washington State's current AMW is \$4,569.08, 150 percent of which is \$6,853.62. The proposed agreement provides for 14 periodic payments in the amount of \$6,853.68 each. This exceeds the amount permitted by law. Therefore the agreement does not meet the requirements of a Claim Resolution Structured Settlement Agreement and must be rejected.

Claim Resolution Structured Settlement Agreements may be initiated only after an order

¹ RCW 51.04.063(2)(c)(ii)

1 allowing the claim is final and binding.² In this agreement the parties admit that there are no claim
2 allowance orders in Claim No. SE-00325 and Claim No. SE-38150. If there is no order allowing a
3 claim, there can be no final and binding claim allowance order. While the agreement says that
4 benefits were provided in each claim, it does not say that benefits were provided by orders that,
5 themselves, could become final and binding. As such, we may not find that there are orders that
6 could constructively constitute final and binding claim allowance orders in either claim. Because
7 there is no final and binding claim allowance order in either Claim No. SE-00325 or Claim
8 No. SE-38150, the agreement does not meet the requirements of a Claim Resolution Structured
9 Settlement Agreement and must be rejected.

10 Claim Resolution Structured Settlement Agreements may not be the result of a material
11 misstatement of law.³ Citing to RCW 51.32.160, the proposed agreement limits the worker's ability
12 to reopen his claim by requiring a showing of objective worsening of conditions caused by his
13 industrial injuries. However, the courts have rejected that requirement if reopening is sought for
14 mental health conditions.⁴ While we are not told that Mr. Gould currently suffers any mental health
15 conditions related to these claims, to the extent that the agreement requires objective worsening to
16 reopen any of the claims, it contains a misstatement of law and must be rejected.

17 Based on the information contained in the submitted agreement, we conclude that one or
18 more of the identified circumstances are present. The agreement is rejected.

19 Dated: January 19, 2016.

20 BOARD OF INDUSTRIAL INSURANCE APPEALS

21 
22 DAVID E. THREEDY, Chairperson

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24 FRANK E. FENNERTY, JR., Member

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26 JACK S. ENG, Member

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31 ² RCW 51.04.063(2)(a)

32 ³ RCW 51.04.063(3)(c)

⁴ *Price v. Department of Labor & Indus.*, 101 Wn. 2d 520 (1984); *In re Deborah Lee*, BIIA Dec., 71 058 (1987). *In re Charles Brown*, Dckt. No. 15 S0148 (October 26, 2015)