BRB No. 89-3478

WILLIAM JOHNSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED:__________________
	)	
GONZALES MARINE	)	
	)	
and	)	
	)	
U.S. FIDELITY & GUARANTY	)	
	)	
Employer/Carrier- Respondents	)	DECISION and ORDER

Appeal of the Order of Steven E. Halpern, Administrative Law Judge, United States Department of Labor.

William Johnson, *pro se*, Pt. Orchard, Washington.

Thomas Owen McElmeel, (McElmeel & Schultz) Seattle, Washington, for employer/carrier.

BEFORE: DOLDER, Acting Chief Administrative Appeals Judge, SMITH, and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, representing himself, appeals the Order (87-LHC-1797) of Administrative Law Judge Steven E. Halpern denying his motion to set aside a Section 8(i), 33 U.S.C. §908(i), settlement rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). In reviewing this *pro se* appeal,[1] the Board will review the administrative law judge's findings of fact and conclusions of law to determine whether they are rational, supported by substantial evidence, and in accordance with applicable law; if so, they must be affirmed. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3); 20 C.F.R. §§802.211(e), 802.220.

[1]At the time that the appeal was filed, claimant was represented by counsel. A petition for review and brief were filed by counsel William C. Decker. On November 20, 1993, claimant advised the Board that he was no longer represented by counsel and requested further direction. No further action by claimant is warranted, as the briefing schedule has closed. Moreover, as claimant is now *pro se*, we will review the administrative law judge's decision for error under our statutory standard of review.

On April 29, 1982, claimant allegedly sustained injuries to his head, neck, back, right shoulder and arm, as well as a psychological injury when he fell 8 to 12 feet head first into a pile of scrap steel while working for employer. Employer voluntarily paid claimant $23,033.05 in medical benefits and $59,801.32 in disability compensation. Thereafter, claimant filed a claim seeking additional compensation under the Act. On April 8, 1988, the parties entered into a proposed settlement agreement in which employer agreed to pay claimant a total sum of $30,000, as well as three outstanding medical bills.[2] After paying other outstanding medical bills and $4,800.10 in fees to his attorney, claimant was to net $25,199.90 in settlement proceeds. At claimant's insistence, his attorney submitted an addendum dated April 5, 1988, along with the proposed agreement in which claimant reiterated his belief in the validity of his claim. On April 18, 1988, the administrative law judge approved the proposed settlement agreement, finding it to be adequate and not procured by duress.

On July 26, 1989, after obtaining new counsel, claimant petitioned to have the settlement agreement set aside on various grounds. In an Order dated September 18, 1989, the administrative law judge denied claimant's motion to set aside the agreed settlement. Claimant appeals this Order, and employer responds, urging affirmance.

After careful review of the evidence of record, we affirm the administrative law judge's denial of claimant's motion to set aside the parties' settlement, as his decision is rational, supported by substantial evidence, and in accordance with applicable law. *See O'Keeffe, supra*; *see generally Poole v. Ingalls Shipbuilding, Inc.* , BRBS , BRB Nos. 92-1259/A (November 24, 1993). Section 8(i) as amended in 1984, 33 U.S.C. §908(i) (1988), provides that when the parties agree to a settlement, the administrative law judge shall approve it within 30 days unless the agreement "is found to be inadequate or procured by duress." When the parties are represented by counsel, the amended subsection further provides that the agreement is deemed approved at the end of 30 days from submission of the agreement "unless specifically disapproved" within that time.

The settlement in this case was approved by the administrative law judge within the 30-day period. Settlement agreements which are properly approved under Section 8(i) are final unless appealed within 30 days as provided by 33 U.S.C. §921, and discharge employer's liability. 33 U.S.C. §908(i)(3). Section 8(i) settlements may not be modified under Section 22 of the Act, 33 U.S.C. §922, the sole provision provided by statute for setting aside an otherwise final decision. Claimant in this case did not seek to set aside the agreement until more than a year after its approval by an administrative law judge. Moreover, even if claimant could bypass these procedural hurdles by demonstrating that his settlement was not properly approved under Section 8(i) and thus his claim remained open, there is no basis for such a finding in this case. *Compare Norton v. National Steel & Shipbuilding Co.*, 25 BRBS 79 (1991), *aff'd on recon.* 27 BRBS 33 (1993)(*en banc*)(Brown, dissenting).

[2]The medical bills which employer agreed to pay included $120 to Dr Finkleman, $120 owed to Humana Hospital, and $75.21 for medications prescribed by Dr. Weiseman.

In his motion to the administrative law judge, claimant argued that the settlement should be set aside because it was inadequate on its face in that it did not indicate that maximum medical improvement had been achieved as is required under the applicable regulation, 20 C.F.R. §702.242(b)(5). The administrative law judge, however, properly rejected this argument, noting that a settlement agreement need only indicate whether maximum medical improvement has been reached, not that it has been achieved, in order to comply with Section 702.242(b)(5). As several medical reports relating to the permanency of claimant's condition had, in fact, been submitted along with the settlement application, the administrative law judge rationally found that this requirement was satisfied by the medical evidence submitted.

Claimant also argued that the approved settlement agreement should be set aside because it did not reflect a meeting of the minds. Claimant asserted that his signing of the proposed agreement was contingent upon an addendum being prepared and submitted therewith reflecting his dissatisfaction with the proposed agreement, which did not occur. In denying claimant's motion, however, the administrative law judge specifically found that an addendum which conveyed claimant's belief in the validity of his claim had accompanied the proposed settlement agreement. The administrative law judge further indicated that an April 8, 1988, letter from claimant's counsel accompanying the addendum indicated that the addendum had been prepared at claimant's request and that it was not intended to change the terms of the settlement. The administrative law judge ultimately concluded that while the addendum reflected that claimant had mixed feelings about settling a claim which he believed to be valid, this document did not provide a proper basis for setting aside the approved settlement, final in effect, which claimant had signed notwithstanding these feelings. As it was not unreasonable for the administrative law judge to conclude that claimant agreed to the settlement based on the evidence before him, we affirm this determination and reject claimant's assertions to the contrary. *See generally Thompson v. Northwest Enviro Services*, 26 BRBS 53 (1992).

The final argument which claimant raised in his motion to set aside the approved settlement was that he lacked capacity to enter into the agreement as evidenced by a February 7, 1989 letter written by neurologist Dr. Bergman. In this letter, Dr. Bergman described claimant's emotional state around the time of the settlement agreement as "somewhat impaired and showing a bit of manic flight of idea" as evidenced by numerous letters he had written to Dr. Bergman at that time. After considering the aforementioned evidence, the administrative law judge determined that neither the description contained in Dr. Bergman's February 7, 1989 letter, nor any of the reports attached thereto, was sufficient to establish that claimant was not competent to enter into the settlement. After also considering the medical opinions of two psychiatrists, Drs. Pipe and Murray, who had examined claimant prior to the settlement agreement, the administrative law judge ultimately concluded that while he believed that claimant had emotional problems at the time of the settlement, the nature of his problems were not such as to render him incompetent to enter into the settlement agreement. As the administrative law judge reasonably interpreted Dr. Bergman's February 7, 1989 letter as insufficient to establish that claimant lacked capacity to enter into the settlement agreement, and Dr. Pipe specifically opined that claimant's cognitive ability was normal, the administrative law

judge's finding that claimant was competent to enter into the settlement agreement is affirmed.[3] *See generally Uglesich v. Stevedoring Services of America*, 24 BRBS 180, 183 (1991). Consequently, the administrative law judge's denial of claimant's motion to set aside the parties' previously approved Section 8(i) settlement is affirmed.[4]

Accordingly, the administrative law judge's Order denying claimant's Motion to Set Aside the Agreed Settlement is affirmed.

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

[3]Dr. Murray's deposition was not included in the record file forwarded by the district director. Despite numerous attempts to obtain this evidence, we have not been successful in doing so. Because the medical opinions of Drs. Pipe and Bergman provide substantial evidence to support the administrative law judge's finding of competency, however, any error which the administrative law judge may have made relating to Dr. Murray's opinion, would, in any event, be harmless.

[4]In light of our affirmance of the administrative law judge's denial of claimant's motion to aside the parties' settlement agreement, we need not address employer's alternate assertion that if the settlement is set aside, it is entitled to reimbursement of the settlement proceeds.