

LILLIE E. BARNES)	
(Widow of ELVIN BARNES))	
)	
Claimant-Respondent)	
)	
v.)	
)	
ALABAMA DRY DOCK AND)	
SHIPBUILDING CORPORATION)	
)	
Self-Insured)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	DATE ISSUED:
UNITED STATES DEPARTMENT)	
OF LABOR)	
)	
Petitioner)	DECISION and ORDER

Appeal of the Decision and Order - Approving Settlement of James W. Kerr, Jr., Administrative Law Judge, United States Department of Labor.

Michael S. Hertzig (Thomas S. Williamson, Jr., Solicitor of Labor; Carol DeDeo, Associate Solicitor; Janet Dunlop, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

BEFORE: BROWN and McGRANERY, Administrative Appeals Judges, and SHEA, Administrative Law Judge.*

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director), appeals the Decision and Order - Approving Settlement (89-LHC-2561) of Administrative Law Judge James W. Kerr, Jr., 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). We must affirm the findings of fact and conclusions of law of the administrative law judge if they are rational, supported by substantial evidence, and in accordance with law. *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5)(1988).

Decedent, claimant's husband, worked for employer during 1954. On July 26, 1988,

decedent, a retiree, became aware that he suffered an 11.6 percent binaural hearing loss and thereafter filed a claim for benefits under the Act. Decedent died on October 7, 1989, from non-work-related causes. After the case was referred to the Office of Administrative Law Judges, claimant and employer reached a compromise settlement that provided for a lump sum payment to claimant of \$1,000, without interest, and \$1,000 for attorney's fees and expenses, for "any and all claims ...against employer arising out of or in connection with the Claimant's occupational hearing impairment" Attached to the settlement agreement, which provided that the amount for compensation and the attorney's fee is adequate and that the settlement agreement was not procured under duress, was an audiogram dated November 30, 1972, which revealed an 11.6 percent binaural hearing loss. Claimant and employer then requested approval of the settlement by the administrative law judge pursuant to Section 8(i) of the Act, 33 U.S.C. §908(i) (1988). In his Decision and Order - Approving Settlement, the administrative law judge approved the settlement, noting that employer agreed to pay claimant a lump sum of \$1000 for "all claims for compensation" related to decedent's occupational hearing loss, and \$1,000 for his attorney's fee, and that the settlement application was signed by claimant, his counsel and employer's counsel.

On appeal, the Director contends that the administrative law judge erred in failing to address the adequacy of the settlement amount. Additionally, the Director contends that the language of the settlement agreement violates Section 8(i) of the Act and its implementing regulations, inasmuch as it discharges employer's potential liability for claims not yet in existence. Neither claimant nor employer have responded to this appeal.

The Director initially contends that the administrative law judge erred by failing to consider the adequacy of the settlement amount agreed to by the parties prior to approving that agreement. We agree. The Board has held that a claim cannot be withdrawn for a sum of money absent compliance with Section 8(i) of the Act, 33 U.S.C. §908(i), and its applicable regulations. *See Norton v. National Steel & Shipbuilding Co.*, 25 BRBS 79 (1991), *aff'd on recon. en banc*, 27 BRBS 33 (1993)(Brown, J. dissenting).

Section 8(i)(1), as amended in 1984, states:

Whenever the parties to any claim for compensation under this chapter, including survivors benefits, agree to a settlement, the district director or administrative law judge shall approve the settlement within thirty days unless it is found to be inadequate or procured by duress. Such settlement may include future medical benefits if the parties so agree. No liability of any employer, carrier, or both for medical, disability, or death benefits shall be discharged unless the application for settlement is approved by the district director or administrative law judge. If the parties to the settlement are represented by counsel, then agreements shall be deemed approved unless specifically disapproved within thirty days after submission for approval.

33 U.S.C. §908(i)(1)(1988). The regulation at 20 C.F.R. §702.243(f) provides, *inter alia*, that:

When presented with a settlement, the adjudicator shall review the application and determine whether, considering all the circumstances . . . the amount is adequate.

20 C.F.R. §702.243(f). In the instant case, the administrative law judge did not render a finding in compliance with 20 C.F.R. §702.243(f); rather, the administrative law judge, after setting forth the terms of the settlement agreement, summarily approved that agreement without discussion. As the administrative law judge's summary approval of the settlement agreement does not comport with the regulations implementing Section 8(i), we vacate the administrative law judge's approval of the parties settlement agreement and remand the case for the administrative law judge to comply with the applicable regulations.¹

The Director additionally asserts that the language of the settlement agreement violates the provisions of Section 8(i) since it purports to settle claims for "any work-related hearing loss." We disagree. Section 8(i)(3) of the Act, 33 U.S.C. §908(i)(3) (1988), provides that a settlement approved under this section shall discharge the employer's liability. The parties' settlement is limited to the rights of the parties and to the claims then in existence. *See Kelly v. Ingalls Shipbuilding, Inc.*, 27 BRBS 117 (1993). In this case, the settlement agreement as a whole clearly indicates the parties' intention to settle only the claim for an 11.6 percent hearing loss in existence in 1972, which represented the maximum percentage of hearing loss which could be attributed to claimant's employment with employer in 1954. Further, decedent died in 1989, so no additional hearing loss claims can be brought on his behalf. Under these circumstances, we conclude that the settlement agreement before the administrative law judge is limited to the hearing loss claim before him.

¹We note that subsequent to the parties' settlement agreement the United States Supreme Court issued its decision in *Bath Iron Works Corp. v. Director, OWCP*, U.S. , 113 S.Ct. 692, 26 BRBS 151 (CRT)(1993), holding that hearing loss claims under the Act, whether filed by current employees or retirees, are claims for a scheduled injury and must be compensated pursuant to Section 8(c)(13), 33 U.S.C. §908(c)(13), of the Act.

Accordingly, the administrative law judge's Decision and Order - Approving Settlement is vacated, and the case remanded for reconsideration consistent with this opinion.

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

ROBERT J. SHEA
Administrative Law Judge