

JEFFREY BOCKMAN)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
PATTON-TULLY TRANSPORTATION)	DATE ISSUED: 07/13/2007
COMPANY)	
)	
and)	
)	
LIBERTY MUTUAL INSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	ORDER on MOTION
Respondents)	for RECONSIDERATION

Claimant has filed a timely motion for reconsideration of the Board's decision in this case, *Bockman v. Patton-Tully Transportation Co.*, 41 BRBS 34 (2007). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Claimant argues that the administrative law judge and the Board failed to address facts establishing that Liberty Mutual (carrier) protected its offset rights and thereby participated in the third-party settlement to a degree which overcomes the Section 33(g)(1), 33 U.S.C. §933(g)(1), requirement that a claimant obtain prior written approval of any third-party settlement for an amount less than his compensation entitlement. Employer/carrier respond, urging the Board to deny the motion. We deny claimant's motion for reconsideration.

Although the administrative law judge found credible the testimony of claimant's third-party counsel regarding the settlement negotiations and that Liberty Mutual was well-informed of the third-party settlement negotiations, the administrative law judge nevertheless concluded that Liberty Mutual disapproved of any settlement based on its letter stating its disapproval of any third-party settlement. Where an employer participates in a third-party suit but refuses to give approval of any settlement, the Section 33(g)(1) requirements are not overcome. *Pool v. General American Oil Co.*, 30 BRBS 183 (1996) (Smith and Brown, JJ., separately concurring and dissenting); *see also Esposito v. Sea-Land Service, Inc.*, 36 BRBS 10 (2002); *Perez v. Int'l Terminal Operating Co.*, 31 BRBS 114 (1997) (Smith, J., concurring). Absent a degree of participation and constructive approval sufficient to overcome the requirements of

Section 33(g)(1), *see, e.g., I.T.O Corp. of Baltimore v. Sellman*, 954 F.2d 239, 25 BRBS 101(CRT), *aff'd in part, vacated in part on recon.*, 967 F.2d 971, 26 BRBS 7(CRT) (4th Cir. 1992), *cert. denied*, 507 U.S. 984 (1993), the plain language of the Act states that, for an employer to remain liable for compensation, a claimant must obtain prior written approval from both the employer and the carrier. 33 U.S.C. §933(g)(1); *Mapp v. Transocean Offshore USA, Inc.*, 38 BRBS 43 (2004). As the administrative law judge found, and the Board affirmed, there was insufficient participation by Liberty Mutual in this case, and claimant did not obtain Liberty Mutual's prior written approval of the third-party settlement. As these findings are supported by substantial evidence and are in accordance with law, we deny claimant's motion for reconsideration.

Accordingly, claimant's motion for reconsideration of the Board's decision in this case is denied. 20 C.F.R. §§801.301(c); 802.409.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge