

BRB No. 91-1634

CARL SETERA)	
)	
Claimant-Respondent)	
)	
v.)	
)	
STEVEDORING SERVICES OF)	DATE ISSUED:
AMERICA)	
)	
and)	
)	
EAGLE PACIFIC INSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT)	
OF LABOR)	
)	
Petitioner)	DECISION AND ORDER

Appeal of the Application for Approval of Agreed Settlement and Compensation Order Pursuant to Section 8(i) of Alexander Karst, Administrative Law Judge, United States Department of Labor.

Donald R. Wilson (Pozzi, Wilson, Atchison, O'Leary & Conboy), Portland, Oregon, for claimant.

Karen O'Kasey (Schwabe, Williamson & Wyatt), Portland, Oregon, for employer/carrier.

Karen B. Kracov (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: SMITH, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director), appeals the Application for Approval of Agreed Settlement and Compensation Order Pursuant to Section 8(i) (91-LHC-38) of Administrative Law Judge Alexander Karst approving a settlement agreement 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 which are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant injured his low back on June 7, 1988, while working for employer. Employer voluntarily paid temporary total disability benefits for the period of June 8 to July 6, 1988, based on an average weekly wage of \$389.85, for a total of \$1,066. Claimant disputed the determination of his average weekly wage and asserted that he was entitled to an additional period of temporary total disability benefits from April 29, 1989 to May 22, 1989, and to permanent partial disability benefits for a loss in wage-earning capacity. The claim for compensation and medical benefits under the Act was referred to the Office of Administrative Law Judges, and a hearing was scheduled for May 23, 1991. Prior to the hearing the parties reached a settlement agreement and submitted an application for approval of the settlement to the administrative law judge.

Pursuant to the settlement agreement, the administrative law judge ordered employer to pay claimant the sum of \$5,150 and claimant's attorney the sum of \$2,350 for representing claimant in the prosecution of his claim. The parties also agreed that employer would continue to provide medical care and treatment for claimant's injury pursuant to Section 7 of the Act, 33 U.S.C. §907. The administrative law judge stated that by virtue of the settlement, employer "is absolved from any and all other liability for compensation, past and future." Decision and Order at 6.

On appeal, the Director contends that the settlement agreement is invalid because it discharges employer's potential liability for benefits for claims not yet in existence. The Director therefore contends that the agreement is invalid under Section 15(b) of the Act, 33 U.S.C. §915(b), which provides that no agreement by an employee to waive his right to compensation under this Act shall be valid. Claimant responds, urging affirmance of the administrative law judge's approval of the settlement agreement. In a letter dated December 6, 1991, counsel for employer stated that employer would not be filing a brief. Counsel stated that she had spoken with the Director's counsel and that employer had agreed to file an amendment to the Section 8(i) settlement. Counsel stated that once the amendment was filed, the Director's appeal would be withdrawn. The Board has not received any motion to withdraw the appeal, and will decide the case on the merits.¹

¹Claimant contends that the Director's appeal must be dismissed because the Director failed to serve her Petition for Review and brief on all parties. We reject this contention. Although the service sheet attached to the Director's brief indicates service only on claimant's counsel and on employer, no prejudice has resulted from the Director's failure to serve claimant or employer's counsel, as claimant and employer have responded to the appeal.

The Director contends that the language in paragraph 9 of the Application for Approval of Agreed Settlement, and number 4 of the administrative law judge's Order is overbroad. Paragraph 9 provides that by virtue of the settlement employer is discharged "from any and all other liability for compensation benefits." Decision and Order at 4. Number 4 of the administrative law judge's Order states that employer is "absolved from any and all other liability for compensation, past and future." Decision and Order at 6. The Director maintains that this language violates the provisions of Section 8(i) of the Act and Section 702.241 of the regulations, 20 C.F.R. §702.241, as it attempts to release employer from liability for all other claims claimant may have in the future against this employer. The Director also asserts that the "overbroad" settlement violates Section 15(b) of the Act.

Section 8(i) of the Act permits the parties in a disputed claim to compromise and settle their dispute, provided the employer and/or carrier therein are fully discharged of liability, and the administrative law judge approves the agreement. 33 U.S.C. §908(i)(1), (3)(1988). The parties' settlement is limited to the rights of the parties and to the claims then in existence. *Kelly v. Ingalls Shipbuilding, Inc.*, 27 BRBS 117 (1993); *Cortner v. Chevron Int'l Oil Co., Inc.*, 22 BRBS 218 (1989); 20 C.F.R. §702.241(g). Section 15(b) of the Act prohibits an employee from waiving his right to compensation and invalidates any attempt to do so. 33 U.S.C. §915(b). However, once approved pursuant to Section 8(i), settlement agreements are binding, and Section 15(b) no longer applies. *See Kelly*, 27 BRBS at 119; *see generally Gutierrez v. Metropolitan Stevedoring Co.*, 18 BRBS 62 (1986).

We reject the Director's contentions. The settlement agreement in the present case indicates that claimant suffers from a degenerative disease of the low back, aggravated by his injury on June 7, 1988. The agreement also states that claimant contested employer's calculation of his average weekly wage and asserted entitlement to additional periods of temporary total disability benefits which employer disputed. It also states that the parties disagreed on claimant's entitlement to permanent partial disability benefits for an alleged loss in wage-earning capacity. The settlement agreement provides that because of the uncertainties of and delay resulting from litigation, the parties agreed to settle the contested claim.

We hold, based on the aforementioned recitation of contested facts and issues, that the settlement agreement can be construed as applying only to the work-related back condition in existence at the time of the settlement agreement, and to any natural progression thereof. *See Kelly*, 27 BRBS at 120. Moreover, the agreement does not limit claimant's rights to file claims for separate and distinct injuries which may later occur. Inasmuch as we reject the Director's contention that the settlement is overbroad, we also hold that Section 15(b) is inapplicable in this case. *Id.* at 119; *see generally Henson v. Arcwel Corp.*, 27 BRBS 212 (1993).

Accordingly, the Application for Approval of Agreed Settlement and Compensation Order Pursuant to Section 8(i) of the administrative law judge is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge