



Claimant, without the assistance of counsel, appeals the Compensation Order Approving Agreed Section 8(i) Settlement and Awarding Legal Fees and Costs, the Order Granting Request for Reconsideration and Order Denying Request to Reopen, and the Order of Dismissal on Remand of §922 Petition for Modification of §908(i) Settlement Agreement (2013-LHC-00507) of Administrative Law Judge Alan L. Bergstrom 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.*, as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *et seq.* (the Act). In an appeal by a claimant without representation by counsel, the Board will review the administrative law judge's findings of fact and conclusions of law to determine if they are rational, supported by substantial evidence, and in accordance with law. If they are, they must be affirmed. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant, who was employed as a supervisory program specialist at employer's Cook Child Development Center at Fort Bragg, filed a claim for benefits under the Act alleging she sustained a psychological injury caused by a stressful work environment through July 13, 2012. The parties submitted to the administrative law judge an application for a Section 8(i), 33 U.S.C. §908(i), settlement. Under the settlement agreement, claimant was to receive a lump sum payment of \$40,000,¹ and her representative was to receive a fee of \$5,000. Upon stating he had considered claimant's age, work history, the degree of her disability and the applicable regulations, 20 C.F.R. §§702.242, 702.243, the administrative law judge approved the settlement on September 23, 2013, finding that it was adequate and not procured by duress. On October 21, 2013, claimant filed, without representation, a request with the administrative law judge to reopen her claim against employer. The administrative law judge considered this request to be a motion for reconsideration and, in an Order dated October 22, 2013, denied that motion.

Claimant appealed to the Board the administrative law judge's Compensation Order Approving Agreed Section 8(i) Settlement and his Order denying claimant's request for reconsideration. BRB No. 14-0038. Claimant subsequently advised the Board that she wished to seek modification of the settlement as she had attempted to submit new evidence to the Board. By Order dated March 5, 2014, the Board dismissed claimant's appeal, and remanded the case for modification proceedings. In an Order of Dismissal on Remand dated March 31, 2014, the administrative law judge dismissed claimant's request for modification of the approved Section 8(i) settlement agreement.

Claimant, without the benefit of counsel, appeals the administrative law judge's Order of Dismissal on Remand. BRB No. 14-0288. Claimant additionally sought reinstatement of her prior appeal, BRB No. 14-0038. In an Order dated June 16, 2014, the Board reinstated claimant's appeal of the administrative law judge's Compensation Order Approving Agreed Section 8(i) Settlement, BRB No. 14-0038, and consolidated it

¹ Of the \$40,000 lump-sum, \$39,920 was apportioned to claimant's past and future compensation benefits, interest and penalties, and \$80 was apportioned for accrued back pay and future medical benefits.

with BRB No. 14-0288 for purposes of decision. Employer responds to claimant's appeals, urging affirmance of the administrative law judge's decisions approving and upholding the settlement agreement.

Section 8(i) of the Act, 33 U.S.C. §908(i), provides for the discharge of employer's liability for benefits when an application for settlement is approved by the district director or administrative law judge. A settlement agreement must be approved by the fact-finder within 30 days of the submission of the agreement, unless the settlement is inadequate, was procured by duress, or is not in conformance with the regulatory criteria. 20 C.F.R. §§702.241-702.243. Settlements are not subject to the Act's modification provisions. 33 U.S.C. §922; *Downs v. Director, OWCP*, 803 F.2d 193, 19 BRBS 36(CRT) (5th Cir. 1986); *Diggles v. Bethlehem Steel Corp.*, 32 BRBS 79 (1998); *Rochester v. George Washington University*, 30 BRBS 233 (1997). Similarly, settlements cannot be unilaterally rescinded after they have been approved. *Porter v. Kwajalein Services, Inc.*, 31 BRBS 112 (1997), *aff'd on recon.*, 32 BRBS 56 (1998), *aff'd sub nom. Porter v. Director, OWCP*, 176 F.3d 484 (9th Cir.) (table), *cert. denied*, 528 U.S. 1052 (1999); *c.f. Oceanic Butler, Inc. v. Nordahl*, 842 F.2d 773, 21 BRBS 33(CRT) (5th Cir. 1988); *Rogers v. Hawaii Stevedores, Inc.*, 37 BRBS 33 (2003) (settlements are subject to rescission by the claimant until approved). However, the Board has left open the suggestion that a settlement may be re-opened as a matter of equity if a party establishes that the settlement was fraudulently secured. *Downs v. Texas Star Shipping Co., Inc.*, 18 BRBS 37, 39-40 (1986), *aff'd sub nom. Downs v. Director, OWCP*, 803 F.2d 193, 19 BRBS 36(CRT) (5th Cir. 1986). In this case, claimant signed the Section 8(i) Settlement Agreement on September 14, 2013, the agreement was filed with the administrative law judge on September 20, 2013, and was approved by the administrative law judge on September 23, 2013.

Claimant challenges the administrative law judge's approval of the settlement agreement and his two orders denying her requests to reconsider or modify the settlement agreement. Specifically, claimant asserts that she is entitled to sums greater than that agreed to in the approved settlement agreement. In support of her assertions, claimant has filed several pleadings in which she cites actions allegedly taken against her by employer's employees, her lack of proper representation before the administrative law judge,² and her present alleged medical conditions.

² Claimant initially acquired legal representation, but her attorney withdrew his representation in January 2013. On March 1, 2013, claimant designated Mr. Lee, a Federal EEO specialist, to be her non-attorney representative. Mr. Lee submitted his credentials to the administrative law judge who then, on March 18, 2013, issued a Notice of Approval of Application to Act as Claimant's Representative. Mr. Lee proceeded to represent claimant through the approval of the settlement agreement.

In approving the settlement agreement, the administrative law judge found that the settlement application complied with the applicable regulations, 20 C.F.R. §§702.242, 702.243, and the administrative law judge considered claimant's age, work history, the degree of her disability and other relevant regulatory factors. The administrative law judge approved the settlement, finding that it was adequate and not procured by duress; thus, employer's liability for benefits under the Act for claimant's alleged psychological injuries was discharged.

In addressing claimant's requests to set aside the agreement in his October 22, 2013 and March 31, 2014 Orders, the administrative law judge found, inter alia, that the alleged actions taken against claimant by employer's employees potentially involved the Equal Employment Opportunity Act and military security regulations, which are not within the jurisdiction of the Act, and therefore cannot be a basis for setting aside the settlement agreement. The administrative law judge again found that the settlement agreement accorded with the regulatory criteria and was not procured under duress, noting that claimant was aware of her rights at the time she signed the settlement agreement. In this regard, the administrative law judge found that claimant was represented at the time the settlement was agreed upon, and that she signed the agreement attesting to the fact that it had not been procured under duress. The administrative law judge noted that the settlement agreement affected only claimant's claim for compensation under the Act, and did not affect any rights claimant may have under other statutes or regulations. *See* October 22, 2013 Order at 2; March 31, 2014 Order at 5-6. Accordingly, the administrative law judge found that claimant provided no basis for rescinding or modifying the settlement agreement, and thus, he denied claimant's motions to set aside the settlement.

We affirm the administrative law judge's approval of the parties' settlement agreement and his denial of claimant's rescission/modification requests. The settlement agreement submitted by the parties fully complies with the regulation at 20 C.F.R. §702.242.³ The administrative law judge properly discussed the adequacy of the sum upon which the parties agreed and determined that the agreement was not entered into under duress. Therefore, the settlement agreement was properly approved by the

³ Specifically, the agreement includes the requisite information regarding the circumstances of claimant's alleged work-related injury, states the terms of the settlement, delineates the issues in dispute, documents the supporting medical and vocational evidence, notes claimant's source of health insurance, and explicitly provides that the agreement was not procured under duress and that claimant agreed to terminate her rights under the Act in exchange for the negotiated amount of the settlement.

administrative law judge. 33 U.S.C. §908(i); *Richardson v. Huntington Ingalls, Inc.*, 48 BRBS 23 (2014).

We also affirm the administrative law judge's finding that there is no basis to set aside or modify the settlement agreement. The administrative law judge again rationally found there is no evidence that claimant was under duress at the time she entered the settlement agreement. Moreover, claimant did not establish that she lacked the mental capacity to understand the settlement agreement, that she was not properly represented at the time of the settlement agreement,⁴ or that the settlement was obtained by fraud. The administrative law judge properly found that claimant's allegations that she was treated improperly, illegally or unfairly by employer, and her dissatisfaction with the amount of the settlement, do not provide not a basis for rescission of the agreement. Therefore, as it is rational and in accordance with law, we affirm the administrative law judge's approval of the Section 8(i) settlement agreement and the denial of claimant's motion to rescind and/or modify that agreement. *Richardson*, 48 BRBS 23; *Porter*, 31 BRBS 112.

⁴ In her correspondence to the Board, claimant avers that her non-attorney representative was "wrongfully paid" a fee by employer out of her settlement proceeds. Contrary to claimant's contention, the settlement specifically set forth two separate amounts to be paid by employer: 1) \$40,000 to claimant for accrued and future disability compensation, interest, penalties, back pay, and future medical benefits; and 2) \$5,000 for fees and costs to claimant's representative.

Accordingly, the administrative law judge's Compensation Order Approving Agreed Section 8(i) Settlement and Awarding Legal Fees and Costs, the Order Granting Request for Reconsideration and Order Denying Request to Reopen, and the Order of Dismissal on Remand of §922 Petition for Modification of §908(i) Settlement Agreement are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge