

BRADY RIVERS)	
)	
Claimant)	
)	
v.)	
)	
ALABAMA DRY DOCK &)	DATE ISSUED:
SHIPBUILDING CORPORATION)	
)	
Self-Insured)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT)	
OF LABOR)	
)	
Petitioner)	DECISION and ORDER

Appeal of the Decision and Order Approving Settlement of Kenneth A. Jennings, Administrative Law Judge, United States Department of Labor.

Michael S. Hertzog (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 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 (90-LHC-62) of Administrative Law Judge Kenneth A. Jennings 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 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).

*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).

Claimant sought benefits under the Act for a work-related binaural hearing impairment.

After the case was referred to the Office of Administrative Law Judges, but prior to the hearing, the parties entered into a proposed settlement agreement in which employer agreed to pay claimant \$7,520.15 in disability compensation for a 24.8 percent binaural hearing loss, as well as an additional \$1,000 in lieu of medical expenses, and \$2,045 in attorney's fees and costs. In a Decision and Order dated August 8, 1990, the administrative law judge, incorporating the parties' agreement by reference, approved the proposed settlement, indicating that he found it adequate under the criteria of 20 C.F.R. §702.243(f). Accordingly, the administrative law judge ordered employer to pay claimant \$8,520.15, without interest, in full settlement of claimant's compensation claim and medical expenses, as well as the sum of \$2,045 for attorney's fees and expenses. The administrative law judge also found that the payment of the aforementioned amounts would discharge employer of all responsibility for claimant's work-related injury of May 13, 1988.

On appeal, the Director contends that the administrative law judge's Decision and Order approving the settlement agreement should be set aside and the case remanded, because it contains no real assessment of the adequacy of the settlement and whether it was procured by duress and thus fails to comply with Section 8(i) of the Act, 33 U.S.C. §908(i), and 20 C.F.R. §§702.241-243 of the regulations.

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). Sections 702.241-243 of the regulations apply to settlements made under Section 8(i). 20 C.F.R. §§702.241-702.243. Section 702.242 specifically identifies the information necessary for a complete settlement application.

We reject the Director's argument that the administrative law judge's approval of the settlement should be set aside. Although the Director asserts that the administrative law judge failed to sufficiently address the adequacy of the settlement and whether it was procured by duress, we disagree. The administrative law judge specifically incorporated the parties' settlement agreement by reference into his Decision and Order approving the settlement. In that agreement, the parties indicated that the settlement amount, representing the full amount of compensation to which claimant was entitled, plus cash in lieu of medical benefits and attorney's fees, was adequate to meet claimant's present and future financial needs. In the agreement, claimant also attested that the settlement had not been procured by duress, and that he had entered into the agreement knowingly, voluntarily, and with the advise and consent of counsel. Because the settlement provided claimant with compensation for a 24.8 percent binaural hearing impairment, the average of the audiograms submitted in support of the settlement application, as well as \$1,000 in lieu of medical benefits and \$2,045 in attorney's fees, the administrative law judge reasonably found based on the parties' agreement that the settlement was adequate under 20 C.F.R. §702.243(f) and not procured by duress. Although the Director alleges that no determination could be made as to the propriety of the assessment because the settlement application was not appended to or reproduced in the administrative law judge's Decision and Order, we reject this hypertechnical argument. The parties' proposed settlement agreement was clearly a part of the record before the administrative law judge,

and the fact that he chose to incorporate the agreement by reference, rather than reproducing it or attaching it to the Decision and Order, is not determinative on the facts presented. Accordingly, as the Director has not raised any contention of reversible error committed by the administrative law judge in evaluating the parties' settlement, his approval of the agreement is affirmed.

Accordingly, the Decision and Order Approving Settlement of the administrative law judge is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

ROBERT J. SHEA
Administrative Law Judge