BRB No. 04-266

BRUCE H. BAILEY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY	)	DATE ISSUED: Aug. 11, 2004
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Order Dismissing Claim of Daniel A. Sarno, Jr., Administrative Law Judge, United States Department of Labor.

Bruce H. Bailey, Newport News, Virginia, *pro se*.

Christopher R. Hedrick (Mason, Mason, Walker & Hedrick, P.C.), Newport News, Virginia, for self-insured employer.

Before: DOLDER, Chief Administrative Appeals Judge, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Order Dismissing Claim (2003-LHC-0669) of Administrative Law Judge Daniel A. Sarno, 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). In an appeal by a claimant without counsel, we will review the administrative law judge's decision to determine if the findings of fact and conclusions of law are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). If they are, they must be affirmed.

Claimant sustained an injury to his left forearm in February 1998. Claimant, who was not represented by counsel at the time, submitted with employer an application for a Section 8(i), 33 U.S.C. §908(i), settlement to Administrative Law Judge Sarno, and he approved it in an order dated October 4, 2001. In December 2002, claimant filed a pre-

hearing statement alleging that employer did not "follow through" with the settlement. Judge Sarno conducted a hearing on July 15, 2003, wherein he attempted to clarify claimant's complaint and resolve the issue. He explained that settlements are not subject to modification and that he does not have the authority to enforce the settlement. 33 U.S.C. §§908(i), 918, 922; Tr. 1 at 2-3. During his questioning of claimant, the administrative law judge determined that claimant was unhappy with the medical benefits aspect of the settlement and that he thought the settlement had been "pushed through" too quickly because he did not have time to review it or thoroughly consider it. Consequently, the administrative law judge surmised that claimant wanted the settlement set aside, so he offered to have claimant sworn as a witness to testify as to whether the agreement was reached under fraud or duress. Claimant refused to testify, and the administrative law judge adjourned the hearing. Tr. 1 at 24-25. He then ordered claimant to show cause why his claim should not be dismissed.

On July 17, 2003, the parties again met before Judge Sarno. Claimant had contacted employer to try to settle the issue. They purportedly agreed to "settle" the matter for $5,000. However, upon questioning by the administrative law judge, claimant said he was not satisfied with the settlement, and he left the courtroom. The administrative law judge stated that the "new settlement" was rejected and the Show Cause Order was still in effect. Tr. 2 at 3-7. On August 1, 2003, claimant filed a letter in response to the Show Cause Order; however, the administrative law judge determined that in his response claimant did not address why the claim should not be dismissed. Instead, he had discussed claimant's unhappiness with the transfer of the case from Administrative Law Judge Purcell, who was originally assigned the new claim, to Judge Sarno, who had approved the original settlement, claimant's certainty that employer's counsel had acted illegally and had made false statements in the original settlement agreement, and claimant's displeasure at not having had time before and/or after to consider the original settlement agreement.

The administrative law judge issued an Order Dismissing Claim on August 14, 2003, explaining each step taken in this portion of the case. Order at 1-2. He determined that claimant did not take the opportunities given to testify as to why he felt the 2001 settlement should be set aside and did not make any attempt to explain why his case should not be dismissed. Consequently, he dismissed claimant's "claim" with prejudice. Claimant appeals, without representation by counsel, and employer responds, urging affirmance.

Claimant, in his letter to the Board, asserts that his "claim" has been tampered with and undermined at every step. He alleges he had only 45 minutes to look over the paperwork for the original settlement and that the settlement was procured under duress. Claimant stated he accepted the proceeds from the original settlement and tried to contact employer to make some changes in that agreement, but he was unable to speak with

employer's attorney. He also alleges that employer's attorney and Judge Sarno acted illegally and that claimant's witness was made unavailable because he was permitted to go to sea for six months, thereby undermining his case. Employer contends the administrative law judge's Order should be affirmed.

We affirm the administrative law judge's Order of Dismissal. Initially, settlements are not subject to modification and cannot be attacked in a later legal proceeding. 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). In this case, the administrative law judge approved the parties' settlement agreement in October 2001. In December 2002, claimant became unhappy with the settlement and challenged it. Claimant's challenge came well beyond the 10-day time frame for filing a motion for reconsideration, *Galle v. Director, OWCP*, 246 F.3d 440, 35 BRBS 17(CRT) (5th Cir.), *cert. denied*, 534 U.S. 1002 (2001); 20 C.F.R. §802.206(b)(1), and the 30-day period for appealing the decision, 33 U.S.C. §921(a); *Diggles*, 32 BRBS at 82; *Porter*, 31 BRBS at 114; 20 C.F.R. §§702.350, 702.391 *et seq*. Therefore, neither the Board nor the administrative law judge is authorized to re-open or alter the settlement agreement, and the administrative law judge is correct in stating that Section 22 is inapplicable.

If, as the administrative law judge surmised, claimant is attempting to have the settlement set aside by claiming it was procured under duress or by undue influence from employer's attorney, we must reject claimant's assertions of impropriety. There is no record evidence to support claimant's allegations. Claimant initialed the application for the original settlement in four places, establishing that he understood what the settlement covered, and he acknowledged by his signature thereafter that there was no pressure, coercion or duress involved. The administrative law judge approved the agreement. When given the opportunity in 2003 to explain why the 2001 settlement should be set aside, claimant refused to take the stand to testify. Tr. 1 at 24-25. When he was before the administrative law judge a second time after purportedly having reached a secondary agreement with employer that presumably would have resolved claimant's dissatisfaction with the original settlement, claimant refused to accept the second settlement on record, and he left the courtroom. Tr. 2 at 5-6. In answering the Show Cause Order, claimant discussed only his dissatisfaction with employer's counsel and the administrative law judge and the alleged lack of time he had within which to make a decision about the terms of the settlement. The administrative law judge determined this was not responsive

to the Order and dismissed the claim.[1]

The administrative law judge gave claimant every opportunity to present his case. Claimant could have testified in two hearings or he could have responded fully to the Show Cause Order, but he refused to do either. Thus, there is no evidence of record to support any of claimant's allegations that he was somehow wronged. *See Downs*, 803 F.2d 193, 19 BRBS 36(CRT); *Rochester*, 30 BRBS at 236 n.3. In light of the circumstances herein, we hold that the administrative law judge acted within his authority in dismissing this case. As the administrative law judge did not abuse his discretion, we must affirm his dismissal of claimant's claim. *See Twigg v. Maryland Shipbuilding & Dry Dock Co.*, 23 BRBS 118 (1989); *Taylor v. B. Frank Joy Co.*, 22 BRBS 408 (1989); 29 C.F.R. §18.5(d)(1); Fed. R. Civ. P. 41(b).

Accordingly, the administrative law judge's Order Dismissing Claim is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
REGINA C. McGRANERY
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge

[1]Moreover, there is no evidence of a new injury here, so there was no real "claim" before the administrative law judge. *See generally Rochester v. George Washington University*, 30 BRBS 233, 236 (1997).