BRB No. 99-1232

EUGENIA GARCIA (Widow of Jose Garcia)	)	
Claimant	)	DATE ISSUED:
v.	)	
MAHER TERMINALS, INCORPORATED	)	
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 on Remand of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Richard P. Stanton, Jr. (Law Offices of William M. Broderick), New York, New York, for self-insured employer.

Kristen Dadey (Henry L. Solano, Solicitor of Labor; Carol A. DeDeo, Associate Solicitor; Samuel J. Oshinsky, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BROWN and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director), appeals the Decision and Order on Remand (97-LHC-1277) of Administrative Law Judge Paul H. Teitler 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 if they 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). This is the second time this case is before the Board.

To reiterate the facts of this case, decedent suffered a work-related injury on March 5, 1987, and was found to be permanently totally disabled as of that date. Decedent died on October 22, 1996. His widow, claimant herein, thereafter filed a claim for death benefits pursuant to Section 9 of the Act, 33 U.S.C. §909. Employer controverted the claim, and the case was transferred to the Office of Administrative Law Judges. Thereafter, employer and claimant entered into stipulations in which employer agreed to pay through the Special Fund, and claimant agreed to accept, $550 per week retroactive to the date of her husband's death and continuing throughout her lifetime. Employer further agreed to reimburse claimant $3,000 for funeral expenses and pay claimant's attorney a fee of $7,500.

Employer and claimant, through counsel, subsequently requested the issuance of a formal order incorporating the terms of their stipulation. On October 8, 1997, the administrative law judge issued a Decision and Order Approving Settlement, in which he stated that he had considered the facts involved in the case and the legal and factual questions in dispute, as well as the criteria set forth in 20 C.F.R. §702.243(f), and concluded that the settlement is fair, in the best interest of claimant, and was concluded without duress. After the issuance of the administrative law judge's decision, the Director filed a motion for reconsideration, asserting that employer cannot unilaterally bind the Special Fund to any agreement regarding the amount of compensation benefits. The Director further contended that the settlement agreement was not a valid Section 8(i), 33 U.S.C. §908(i), settlement pursuant to 20 C.F.R. §702.242. In his Order Granting Motion for Reconsideration, the administrative law judge agreed with the Director that claimant was entitled to weekly benefits of $649.29, *i.e.*, half of decedent's average weekly wage as of October 22, 1996, the date of decedent's death, and directed employer to pay the difference of $109.29 from October 22, 1996. In an Errata dated December 5, 1997, the administrative law judge amended his earlier order and stated that payments at the rate of $550 per week shall begin as of the date of decedent's death and that said payments are to be made by the Special Fund for the widow's lifetime.

The Director appealed, asserting that the administrative law judge erred in approving the parties' stipulations as a settlement pursuant to Section 8(i) of the Act when the stipulations did not comply with the requirements set forth in 20 C.F.R. §702.242 for a complete Section 8(i) settlement application; additionally, the Director asserted that a settlement requiring payments by the Special Fund, without the participation of the Director, is prohibited by Section 8(i)(4) of the Act, 33 U.S.C. §908(i)(4).

In its Decision and Order, the Board agreed with the Director that, because he did not participate in the settlement negotiations between claimant and employer and neither he nor his representative signed the settlement agreement, that portion of the agreement pertaining to Section 8(f), 33 U.S.C. §908(f), relief is invalid. Additionally, the Board held that the settlement application itself did not comply with the regulations set forth in 20 C.F.R. §§702.241-243. Accordingly, the Board held that a proper settlement had not been accomplished pursuant to Section 8(i); the Board thus vacated the administrative law judge's approval of the settlement and remanded the case for a determination on the merits.[1] *Garcia v. Maher Terminals, Inc.*, BRB No. 98-0511 (Dec. 22, 1998)(unpublished).

On remand, the Director and the parties participated in a hearing, during which time the Director again refused to give his approval to the same proposed settlement agreement. Thereafter, in his Decision and Order on Remand, the administrative law judge once again approved the prior settlement agreement. The Director now appeals, contending that the administrative law judge erred in two respects: (1) he approved the same settlement which the Board had previously determined was insufficient and did not meet the regulatory criteria; and (2) he approved an agreement in which the Director did not participate in violation of Section 8(i)(4) of the Act, 33 U.S.C. §908(i)(4). Employer responds, urging affirmance; claimant has not responded.

We agree with the Director that the administrative law judge erred in failing to comply with the Board's remand order. Section 802.405(a) of the regulations, 20 C.F.R. §802.405(a), governing the operations of the Benefits Review Board, provides that "[w]here a case is remanded, such additional proceedings shall be initiated and such other action shall be taken as is directed by the Board." The Board's first Decision and Order specifically held that the portion of the settlement agreement at issue pertaining to Section 8(f) relief is invalid, that the stipulations set forth by the parties do not meet the regulatory criteria set forth in Section 702.242 of the regulations, and that the Board was remanding the case to the administrative law judge for a determination on the merits. Thus, in reinstating his prior acceptance of the settlement agreement over the Director's objection, the administrative law judge erred by failing to follow the Board's directive. *See Obert v. John T. Clark & Son of Maryland*, 23 BRBS 157, 159 (1990).

[1]The Board additionally acknowledged that, on remand, a new settlement may be reached with the approval of the Director and compliance with the regulations, as set forth in 20 C.F.R. §§702.241-243.

As the Board set forth in its initial decision, claimants are not permitted to waive their right to compensation under the Act except through settlements approved under Section 8(i), which provides for the settlement of claims for compensation by a procedure in which an application for settlement is submitted for the approval of the district director or administrative law judge. *See* 33 U.S.C. §§915, 916; *Henry v. Coordinated Caribbean Transport*, 32 BRBS 29 (1998), *aff'd*, 204 F.3d 609, 34 BRBS 515 (CRT)(5th Cir. 2000). Such an application should be in the form of a stipulation signed by all the parties, 20 C.F.R. §702.242(a), and it must contain the documentation required by Section 702.242(b)(1)-(8). Most importantly, the plain language of the Act prohibits holding the Special Fund liable for benefits pursuant to a Section 8(i) settlement agreed between claimant and employer. Section 8(i)(4) states that the Special Fund "shall not be liable" for sums payable under a settlement between claimant and employer. Thus, unless the Director agrees, employer cannot settle a claim and receive the benefit of Section 8(f). *See Strike v. S. J. Groves & Sons*, 31 BRBS 83 (1997), *aff'd sub nom. S. J. Groves & Sons v. Director, OWCP*, 166 F.3d 1206 (3d Cir. 1998)(table). *Cf. Nelson v. Stevedoring Services of America*, BRBS , BRB No. 99-1056 (July 11, 2000), *motion for reconsideration filed* (Aug. 10, 2000) (Section 8(i)(4) bar not applicable where Director approved Section 8(f) relief and agreed order could be entered based on hearing or agreement of parties as to extent of disability)*; Dickinson v. Alabama Dry Dock & Shipbuilding Corp.*, 28 BRBS 84 (1993) (no bar where Director approved Section 8(f) relief and order was within approved benefit level).

In the instant case, claimant and employer did not reach a new settlement agreement with the approval of the Director, but rather sought the administrative law judge's approval of the same settlement over the Director's objections. As the administrative law judge's subsequent approval of this settlement agreement contravenes the directive of the Board set forth in its initial decision, as well as violates Section 8(i)(4) of the Act, the administrative law judge's decision on remand must be vacated, and the case must again be remanded.

Accordingly, the administrative law judge's Decision and Order on Remand is vacated, and the case is remanded for further consideration consistent with the Board's opinions in this case.

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge