U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 24-0089

VERONICA McRAE (Widow of ANTHONY T. McRAE) Claimant-Petitioner v. SSA TERMINALS, LLC and HOMEPORT INSURANCE COMPANY Employer/Carrier- Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Respondent	)	**PUBLISHED** DATE ISSUED: 09/15/2025 DECISION and ORDER

Appeal of the Order Denying Motions to Dismiss Based on Lack of Subject Matter Jurisdiction and Failure to State a Claim for Which Relief May Be Granted and Order Denying Reconsideration and Order Staying Discovery of Christopher Larsen, Administrative Law Judge, United States Department of Labor.

Joshua T. Gillelan II (Longshore Claimants' National Law Center), Washington, D.C., and Daniel R. Weltin (The Law Offices of Daniel Weltin, P.C.), San Leandro, California, for Claimant.

Gursimmar Sibia (Sibia, Chang & Bruyneel, LLP), San Francisco, California, for Employer and its Carrier.

Cory A. Birnberg (Birnberg & Associates), San Francisco, California, for Parties-In-Interest Sabrina McRae and Mariah McRae.

Amanda Torres (Jonathan Snare, Deputy Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for Administrative Appeals), Washington, D.C., for the Acting Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: GRESH, Chief Administrative Appeals Judge, ROLFE and JONES, Administrative Appeals Judges.

PER CURIAM:

On December 3, 2023, Claimant Veronica McRae filed an appeal of Administrative Law Judge (ALJ) Christopher Larsen's Order Denying Motions to Dismiss Based on Lack of Subject Matter Jurisdiction and Failure to State a Claim for Which Relief May Be Granted and Order Denying Reconsideration and Staying Discovery (2022-LHC-00670). 33 U.S.C. §921(a); 20 C.F.R. §§802.201, 802.205(a). Claimant's appeal was assigned the Benefits Review Board's docket number 24-0089. 20 C.F.R. §802.210.

In April 2019, Anthony T. McRae (Decedent) suffered an injury to his lower back in the course of his employment. He died following lumbar surgery in December 2020. Claimant, Decedent's purported widow, filed a claim for benefits pursuant to the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§901-950 (Act), seeking both death benefits and *inter vivos* benefits owed to Decedent. On October 21, 2022, ALJ Richard M. Clark issued an Order Approving Settlement and Fees between Employer and Claimant (Settlement Order), thereby resolving all existing claims for disability compensation, medical benefits, death benefits, funeral expenses, and attorney fees and costs arising out of Decedent's work-related injury. Neither party sought reconsideration or filed a timely appeal of the Settlement Order.[1]

[1] Section 8(i) of the Act, 33 U.S.C. §908(i), governs settlements of claims. A settlement agreement must be approved within thirty days of its submission unless it is inadequate, procured by duress, or not in conformance with the regulatory criteria. 20 C.F.R. §§702.241-702.243; *see Losacano v. Elec. Boat Corp.*, 48 BRBS 49, 51-52 (2014); *Richardson v. Huntington Ingalls, Inc.*, 48 BRBS 23, 24 (2014). Once approved, the settlement completely discharges the employer's liability for the claimant's injury. 33

Approximately eight months later, on August 15, 2023, Employer filed a Motion to Set-Aside Order Approving Settlement and Fees (Set-Aside Mot.).[2] Employer alleged Claimant procured the settlement through fraud and misrepresentation, asserting she was not legally married to Decedent at the time of his death and knew she was not legally married to him at the time of his death when she entered into the settlement agreement. Set-Aside Mot. at 1. It requested the Settlement Order be set aside and that "potential fraud proceedings . . . be commenced pursuant to Section 31 of the Act." *Id.* at 6.

The matter was assigned to ALJ Larsen, who issued an Order to Show Cause requiring Claimant either show she was married to Decedent at the time of his death or provide "some other legal reason why Employer's motion should be denied." Claimant responded, arguing she believed in good faith that she was married to Decedent at the time of his death, that all settlement negotiations were conducted "at arm's length" between the represented parties, and that Employer failed to provide sufficient evidence of fraud.

On October 26, 2023, the ALJ issued an Order Setting Hearing on Motion to Set Aside Order Approving Settlement and Fees (Scheduling Order). He noted neither the Act nor the Office of Administrative Law Judges' Rules of Practice and Procedure (OALJ Rules) specifically provided for setting aside a settlement order due to fraud. Consequently, he determined the Federal Rules of Civil Procedure (Fed. R. Civ. P.) applied pursuant to 29 C.F.R. §18.10(a).[3] Scheduling Order at 2. The ALJ relied on both Fed. R. Civ. P. 60(b)(3), which allows a party to seek relief from a final judgment for fraud, and the Board's dicta in *Downs v. Tex. Star Shipping Co.*, 18 BRBS 37, 40 (1986), *aff'd sub nom. Downs v. Director, OWCP*, 803 F.2d 193 (5th Cir. 1986), that allegations of fraud "conceivably" may be enough to reopen a settlement as a matter of common law equity.[4]

U.S.C. §908(i)(3); 20 C.F.R. §702.243(b); *Diggles v. Bethlehem Steel Corp.*, 32 BRBS 79, 81-82 (1998). Section 8(i) settlement orders cannot be modified under Section 22 of the Act, 33 U.S.C. §922.

[2] Carrier Homeport Insurance Co. also instituted a state court action against Claimant and her former counsel in Alameda County Superior Court, *Homeport Ins. Co. v. McRae*, Case No. 23-CV-041224, seeking reimbursement of benefits and attorney fees paid pursuant to the settlement order.

[3] 29 C.F.R. §18.10(a) states, in relevant part: "The Federal Rules of Civil Procedure (FRCP) apply in any situation not provided for or controlled by these rules, or a governing statute, regulation, or executive order."

[4] In *Downs*, 803 F.2d 193, the United States Court of Appeals for the Fifth Circuit affirmed the Board's decision on the validity and approval of the settlement in that case, as well as its holding that Section 22 of the Act, 33 U.S.C. §922, is unavailable to modify an

Id. After stating what he believed to be the legal standard for setting aside a settlement due to fraud, however, the ALJ found he had insufficient information to rule on Employer's motion and scheduled a hearing. *Id.* at 2-3 (citing *Clarion Corp. v. Am. Home Prods. Corp.*, 494 F.2d 860, 865 (7th Cir. 1974)).

On November 15, 2023, Claimant filed three separate motions: a Motion to Dismiss Based on Lack of Subject Matter Jurisdiction (Mot. Dismiss I), a Motion to Dismiss Based on Failure to State a Claim for Which Relief Can Be Granted (Mot. Dismiss II), and a Motion to Continue the December 7, 2023 Hearing and Provide for Prehearing Discovery (in the alternative only) (Mot. Continue). Relying on *Valdez v. Crosby & Overton*, 34 BRBS 69 (2000), Claimant argued the ALJ lacked jurisdiction to adjudicate allegations of fraud because Section 31 of the Act provides Employer's sole remedy.[5] Mot. Dismiss I at

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approved settlement. In a footnote, the Fifth Circuit commented on the Board's dicta regarding the potential reopening of a settlement for equitable reasons:

> We note that Downs has made serious allegations of misconduct against his former counsel, and *these allegations could conceivably be the grounds for reopening the settlement as a matter of common law equity, independent of section 922*. *Howard v. Chris-Craft Corp.*, 562 F.Supp. 932 (E.D. Tex 1982); *see also* Larson, *Workmen's Compensation Law* §81.51(a) (1985). The instances of misconduct are however solely attributable to Downs' former counsel; no fraudulent activity or conduct is in any way linked to his employer or the insurance carrier . . . . *We therefore find no basis to employ equity to relieve Downs of the settlement agreement he voluntarily, though possibly incorrectly, entered.*

Downs, 803 F.2d at 200 n.5 (emphasis added).

[5] In support of this argument, Claimant cited footnotes 16 and 17 of the *Valdez* decision, and the ALJ adopted this citation. Mot. Dismiss I at 2; Mot. Dismiss II at 2; Jurisdiction Order at 2. We note that while the *Valdez* decision that the Board issued and posted on the Board's website contains only thirteen footnotes, the footnotes after footnote 4 were misnumbered, as the fifth footnote was numbered "10" and the subsequent footnotes follow from "10" sequentially. Claimant apparently relied on this version of the Board's decision, which is also found in the Westlaw version of *Valdez*, in which the footnotes are similarly misnumbered. *Valdez*, 2000 WL 913803 (2000). However, the thirteen footnotes in the *Valdez* decision as published in the Benefits Review Board Service Longshore Reporter (BRBS) are correctly numbered sequentially "1" through "13." *Valdez*, 39 BRBS 69 (2000). Therefore, footnotes 16 and 17 of the website and Westlaw versions correspond

1-3; Mot. Dismiss II at 2; *see* 33 U.S.C. §931(a). Claimant maintained the ALJ, as a statutorily-created judge, had jurisdiction only over questions "in respect of" a claim pursuant to the Act. Mot. Dismiss I at 2-3 (citing 33 U.S.C. §919(a); *Temp. Emp. Servs. v. Trinity Marine Group [Ricks]*, 261 F.3d 456 (5th Cir. 2001)). Further, Claimant argued the Board's use of the word "conceivably" in dicta in *Downs* was not sufficient to confer common-law equity jurisdiction. *Id.* at 4.

On November 16, 2023, the ALJ issued an Order Denying Motions to Dismiss Based on Lack of Subject Matter Jurisdiction and Failure to State a Claim for Which Relief May Be Granted (Jurisdiction Order). He noted Section 19(a) sets out an ALJ's jurisdiction to consider questions "in respect of" a claim and issues "essential to resolving the rights and liabilities" of the parties. Jurisdiction Order at 1. But he found Claimant's reliance on "dicta" in *Valdez* unpersuasive, especially because *Valdez* involved a different issue, namely whether an employer can recover from a claimant an overpayment of benefits due to fraud. *Id.* at 2. As Employer in this case did not seek reimbursement, and the ALJ stated he had "no intention of imposing criminal liability," the ALJ found he had jurisdiction over the claim under Section 19(a). He also found he had the authority to set aside the settlement pursuant to both *Downs* and Fed. R. Civ. P. 60(b)(3). Jurisdiction Order at 2. Consequently, the ALJ denied Claimant's Motions to Dismiss. Claimant sought reconsideration.

A series of discovery-related filings from Claimant, Employer, and Parties-In-Interest (specifically, Decedent's children and purported heirs Sabrina McRae and Mariah McRae) followed. In response, the ALJ issued an Order Denying Reconsideration and Order Staying Discovery on November 29, 2023. (Recon. Order). He reiterated his denial of Claimant's Motions to Dismiss and denied Claimant's Motion for Reconsideration. In addition, he ordered a temporary stay on all discovery "pending further order" and limited the scheduled hearing to one witness: Claimant. Recon. Order at 2.

On December 2, 2023, Claimant filed this interlocutory appeal.[6] The Board generally does not undertake review of a non-final order. *See, e.g., Newton v. P & O Ports*

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to footnotes 11 and 12 of the Board's published decision in the BRBS – the content of which supports Claimant's argument.

[6] Attached to Claimant's Notice of Appeal was a Motion for Summary Reversal and Dismissal of Proceeding. On December 5, 2023, the Parties-In-Interest, Sabrina McRae and Mariah McRae, filed a Notice of Appearance and Request to Dismiss Claimant's interlocutory appeal. Claimant responded with a Motion to Strike the Interested Parties' Notice of Appearance and Opposition to the Motion to Dismiss. The Board acknowledged Claimant's appeal on December 11, 2023, granting her thirty days to file a Petition for Review. On December 15, 2023, the Director, Office of Workers' Compensation Programs

La., Inc., 38 BRBS 23, 24 (2004); *Butler v. Ingalls Shipbuilding, Inc.*, 28 BRBS 114, 117 (1994). The Board will undertake interlocutory review only if the non-final order conclusively determines a disputed question, resolves an important issue which is separate from the merits of the action, and is effectively unreviewable on appeal from a final judgment. *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 276 (1988) ("collateral order doctrine"); *Zaradnik v. The Dutra Grp., Inc.*, 52 BRBS 23, 24 (2018), *appeal dismissed*, 792 F. App'x 518 (9th Cir. 2020). If the order at issue fails to satisfy any one of these requirements, the Board, in its discretion, still may decide the appeal if necessary to direct the course of the adjudicatory process or if a party has been denied due process of law. 33 U.S.C. §923(a) (the Board is not bound by formal rules of procedure); *Pensado v. L-3 Commc'ns Corp.*, 48 BRBS 37, 37 (2014); *Newton,* 38 BRBS at 25; *Baroumes v. Eagle Marine Servs.*, 23 BRBS 80, 82 (1989); *Niazy v. The Capital Hilton Hotel*, 19 BRBS 266, 269 (1987).

In this case, the importance of the issue – the extent of an ALJ's jurisdictional authority under the Act – warrants consideration of Claimant's appeal. *Watson v. Huntington Ingalls Indus., Inc.*, 51 BRBS 17, 21 (2017); *Pensado*, 48 BRBS at 37; *Armani v. Glob. Linguist Sols.*, 46 BRBS 63, 64 (2012); *L.D. [Dale] v. Northrup Grumman Ship Sys., Inc.*, 42 BRBS 1, 2 (2008); *Hardgrove v. Coast Guard Exch. Sys.*, 37 BRBS 21, 22 (2003); *Percoats v. Marine Terminals Corp.*, 15 BRBS 151 (1982); *Lopes v. George Hyman Constr. Co.*, 13 BRBS 314, 316 (1981); *Murphy v. Honeywell, Inc.*, 8 BRBS 178, 180 (1978). We therefore accept Claimant's interlocutory appeal to address whether an

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(Director) filed a Motion to Clarify Briefing Schedule, and on December 22, 2023, Employer submitted a Response to Claimant's Motion for Summary Reversal (Emp.'s Resp. Br.). On January 11, 2024, Claimant timely submitted her Petition for Review and supporting brief (Cl's. Br.), which was identical to her Motion for Summary Reversal and Dismissal of Proceeding. In its Order dated January 29, 2024, the Board accepted both Claimant's Motion for Summary Reversal and Employer's Response into the record, granted the parties thirty days to respond to Claimant's Petition for Review, and denied Claimant's Motion to Strike. The Director submitted his response on February 13, 2024 (Dir.'s Resp.), and Employer indicated by letter dated February 28, 2024, that its previously submitted Response to Claimant's Motion for Summary Reversal should be considered its response brief. On February 29, 2024, the Parties-In-Interest submitted a Response in Opposition to Motion for Summary Reversal and Response to Petition for Review. Claimant subsequently submitted a Brief in Reply to Homeport's and Daughters' Responses in Opposition to Petition for Review (Cl.'s Reply Br.).

ALJ has jurisdictional authority under the Act to set aside a Section 8(i) settlement order on equitable grounds.[7]

The ALJ initially found he has jurisdiction over Employer's motion pursuant to Section 19(a) of the Act, 33 U.S.C. §919(a), because the issue before him was "in respect of" a claim.[8] Jurisdiction Order at 1; Emp. Resp. Br. at 6. Claimant and the Director argue the final settlement order resolved any pending claim and, as a result, no claim exists over which the ALJ can assert Section 19(a) jurisdiction. Cl.'s Br. at 16; Dir.'s Resp. at 5-6; Cl.'s Reply Br. at 11-12.

In *Jourdan v. Equitable Equip. Co.*, 32 BRBS 200 (1998), the Board defined "in respect of" and the scope of an ALJ's statutory jurisdiction. *See* Section 19(a) of the Act, 33 U.S.C. §919(a). To be considered an issue raised "in respect of" a claim, the issue must be "either necessary or related to the compensation award;" the issue's resolution must be "related to" compensation liability; and the remedy to resolve the issue must have "arisen from the Act itself and its implementing regulations."[9] *Id.* at 206. In this case, although Claimant's claim for benefits has arguably been resolved pursuant to the settlement, Employer has raised a factual dispute bearing directly on its liability for Claimant's injury. *Ricks*, 261 F.3d at 463; *Equitable Equip. Co.*, 191 F.3d at 632; *Jourdan*, 32 BRBS at 206.

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[7] This case arises within the jurisdiction of the United States Court of Appeals for the Ninth Circuit because Decedent sustained his injury in Oakland, California. 33 U.S.C. §921(c); *see Roberts v. Custom Ship Interiors*, 35 BRBS 65, 67 n.2 (2001), *aff'd*, 300 F.3d 510 (4th Cir. 2002), *cert. denied*, 537 U.S. 1188 (2003); 20 C.F.R. §702.201(a).

[8] 33 U.S.C. §919(a) states, in relevant part: "the deputy commissioner shall have full power and authority to hear and determine all questions in respect of such claim." The 1972 Amendments to the Act transferred the hearing authority previously held by the deputy commissioners to administrative law judges. 33 U.S.C. §919(d); 20 C.F.R. §701.301(a)(7) ("deputy commissioner" now "district director").

[9] The United States Court of Appeals for the Fifth Circuit affirmed the Board's decision in *Jourdan*, holding that an issue before the ALJ is "beyond the jurisdictional reach of § 919(a) . . . when the underlying compensation claim has been resolved and no factual dispute regarding the compensation claim itself must be decided." *Equitable Equip. Co. v. Director, OWCP*, [*Jourdan*], 191 F.3d 630, 632 (5th Cir. 1999); *see also Ricks*, 261 F.3d at 463 ("[C]ourts have repeatedly rejected attempts to read the 'in respect of' language expansively; rather, courts have focused on the fact that the disputed issue must be essential to resolving the rights and liabilities of the claimant, the employer, and the insurer regarding the compensation claim under the relevant statutory law."); *Kirkpatrick v. B.B.I., Inc.*, 39 BRBS 69, 73 (2005).

The only remaining question is whether Employer's requested "remedy has arisen from the Act itself and its implementing regulations." *Jourdan*, 32 BRBS at 206. We hold that it has not.

Employer seeks to set aside ALJ Clark's 2022 Settlement Order. The ALJ found he had the authority as a matter of common-law equity to grant Employer's requested remedy pursuant to *Downs*, 18 BRBS at 40, and Fed. R. Civ. P. 60(b)(3).[10] In *Downs*, the Board seemingly posited that ALJs might have such authority:

> While any further discussion of the procedural issues in this case would normally end here, claimant's serious allegations against his former counsel could conceivably be sufficient grounds for reopening the settlement as a matter of common law equity. *See Howard v. Chris-Craft Corporation*, 562 F. Supp. 932 (S.D. Tex. 1982); Larson, *Workmen's Compensation Law* §81.51(a) (1985). Courts have allowed settlements to be reopened when legitimate allegations of fraud by employer or insurer are made.

Downs, 18 BRBS at 40. The Board found, however, that the claimant in *Downs* had not provided sufficient evidence of fraud to justify "disturb[ing] the general rule that approved settlements cannot be reopened." *Id.*

The Board's language in *Downs* constitutes dicta insufficient to grant the ALJ authority under the Act to set aside a Section 8(i) settlement for fraud because it lacks any statutory support. An ALJ is a judicial officer of a legislatively-created administrative tribunal (as opposed to a "court" within the meaning of Article III of the United States Constitution), and his authority cannot extend beyond the statutory language of the Act. *Rochester v. George Washington Univ.*, 30 BRBS 233, 235 (1997);[11] *see also Crowell v.*

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[10] Rule 60(b)(3) states, in relevant part: "Grounds for Relief from a Final Judgment. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: … (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party." Any such motion must be brought within one year of the final order. *See* Fed. R. Civ. P. 60(c)(1).

[11] Employer attempts to distinguish the Board's holding in *Rochester* because the claimant in that case did not seek to set aside the settlement due to fraud. Emp.'s Resp. Br. at 7-8; *see Rochester*, 30 BRBS at 236 n.3. In *Rochester*, the Board, having initially determined it lacked authority as a matter of common-law equity to set aside a settlement order, next examined its statutory authority to do so, citing the statement in *Downs* that it was "well-established" that Section 8(i) agreements are final and cannot be modified under the Act, "even in its pre-1984 Amendments incarnation." *Rochester*, 30 BRBS at 235.

Benson, 285 U.S. 22, 51-65 (1932). Thus, an ALJ's authority "is confined to a right created by Congress; [his] jurisdiction . . . is limited to 'a particularized area of law.'" *Schmit v. ITT Fed. Elec. Int'l*, 986 F.2d 1103, 1109 (7th Cir. 1993) (quoting *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 85 (1982)). The Board's language in *Downs* suggesting an ALJ could "conceivably" set aside a settlement relies only on a common-law case issued by an Article III court, *see Downs*, 18 BRBS at 40 (citing *Howard*, 562 F. Supp. 932), and, therefore, is insufficient to confer such authority.

Rather than relying on dicta, the ALJ must look to the Act's statutory language to determine whether he has the authority to set aside a compensation order approving a Section 8(i) settlement.[12] *Stevedoring Servs. of Am., Inc. v. Eggert*, 953 F.2d 552, 556-557 (9th Cir. 1992); *see also Del. River Stevedores v. DiFidelto*, 440 F.3d 615, 621-622 (3d Cir. 2006); *Lennon v. Waterfront Transp.*, 20 F.3d 658, 661 (5th Cir. 1994); *Ceres Gulf v. Cooper*, 957 F.2d 1199, 1205-1209 (5th Cir. 1992). If the Act explicitly provides a specific remedy, the ALJ does not have authority to look beyond that remedy. *Lennon*, 20 F.3d at 661; *Cooper*, 957 F.2d at 1205-1206; *Eggert*, 953 F.2d at 556-557.

The Act contains two provisions allowing parties to set aside a compensation order: Sections 21 and 22. 33 U.S.C. §§921, 922. Section 21 explicitly limits a party's recourse for setting aside a compensation order to the appeals process.[13] 33 U.S.C. §921. Section 22 provides that parties may seek "modification" of an award by granting ALJs power to "terminate, continue, reinstate, increase, or decrease" a compensation award based on a mistake of fact or change in conditions. 33 U.S.C §922. These statutory provisions are the exclusive means for setting aside a compensation order. Thus, they preclude the ALJ from

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Therefore, the Board held the claimant in that case was statutorily precluded from "attack[ing] the properly approved settlement under Section 22," noting "[e]quitable concerns do not come into play." *Id.* at 236. The Board also noted that fraud was alleged in *Downs* but was not alleged *Rochester*. *Id.* at 236 n.3. But this footnote also constitutes dicta and does not undermine the Board's holding in *Rochester* that as a matter of common-law equity an ALJ lacks jurisdiction to set aside an approved settlement order.

[12] An order approving a Section 8(i) settlement is a compensation order. *M.K. [Kellstrom] v. Cal. United Terminals*, 43 BRBS 1, 6-7 (2009).

[13] 33 U.S.C. §921(e) states: "Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and section 918 of this title." *See also Cooper*, 957 F.2d at 1206, 1209 (employer was improperly seeking to set aside a compensation order "which §921(e) expressly prohibits being done except through procedures established in §§921 and 918.").

addressing Employer's motion, as Employer failed to timely seek review of the settlement order under Section 21, and Section 22 specifically prohibits the modification of settlements. *See Greenhouse v. Ingalls Shipbuilding, Inc.*, 31 BRBS 41, 43 (1997) ("[T]here is no authority in the Act or the regulations for reopening a case that has reached finality and is not subject to modification."); *Porter*, 31 BRBS at 113-114; *Diggles*, 32 BRBS at 81-82.

Despite this clear statutory language directly addressing the means for granting the relief Employer seeks, the ALJ found neither the Act nor the OALJ Rules specifically provide for setting aside a settlement order due to fraud. Consequently, he applied Fed. R. Civ. P. Rule 60(b)(3). Scheduling Order at 2 (citing 29 C.F.R. §18.10(a)). However, the Act also unequivocally addresses situations involving fraudulently filed claims. 33 U.S.C. §931(a).[14] Section 31(a) is an employer's sole remedy against fraudulent claims. *Valdez*, 34 BRBS at 77;[15] *see also Phillips v. A-Z Int'l*, 30 BRBS 215, 218 (1996) ("Section 31(a) is the sole remedy against a claimant who has allegedly filed a false claim."). It establishes that any false statement or representation knowingly and willfully made for the purpose of obtaining benefits under the Act is a felony, punishable by a fine of not more than $10,000 or imprisonment not to exceed five years, or both. 33 U.S.C. §931(a)(1). Complaints under subsection (a)(1) are to be investigated by the United States Attorney for the district where

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[14] 33 U.S.C. §931(a) states:

> (1) Any claimant or representative of a claimant who knowingly and willfully makes a false statement or representation for the purpose of obtaining a benefit or payment under this chapter shall be guilty of a felony, and on conviction thereof shall be punished by a fine not to exceed $10,000, by imprisonment not to exceed five years, or by both.
>
> (2) The United States attorney for the district in which the injury is alleged to have occurred shall make every reasonable effort to promptly investigate each complaint made under this subsection.

[15] The ALJ rejected Claimant's reliance on *Valdez* as support for her Motions to Dismiss, found the Board's language that Claimant quoted constituted dicta, and determined the dispute at issue in that case was distinguishable (i.e., whether an employer could recover overpaid benefits obtained through fraud). Jurisdiction Order at 2. On the contrary, the quoted language is not dicta as it directly addressed the employer's argument that it was "entitled to relief against the fraud committed by [the claimant] … under Sections 19, 27, and 31 of the Act." *Valdez*, 34 BRBS at 77. The Board rejected this argument, finding Section 31(a) contained the employer's "sole remedy" for fraud. *Id*. at 77, n.13.

the injury occurred. 33 U.S.C. §931(a)(2). Because the Act provides an employer with an exclusive remedy against fraudulent claims, the ALJ erred by relying on Fed. R. Civ. P. 60(b)(3).

As the remedy Employer seeks does not arise from the Act itself or its implementing regulations, the ALJ does not have authority to grant it. 33 U.S.C. §919(a); *Jourdan*, 32 BRBS at 206. The ALJ improperly relied on dicta and Fed. R. Civ. P. 60(b)(3) to assert the jurisdiction to set aside a Section 8(i) settlement order based on Claimant's purported fraud. *A-Z Int'l v. Phillips*, 323 F.3d 1141, 1145-1146 (9th Cir. 2003). Sections 21 and 22 of the Act provide the specific means for setting aside final compensation orders, and Section 31(a) provides the sole remedy for fraud. 33 U.S.C. §§921, 922, 931(a); *Eggert*, 953 F.2d at 556; *see also Metro. Stevedore Co. v. Brickner*, 11 F.3d 887, 891 (9th Cir. 1993) ("Ordinarily, when Congress has provided a particular remedy, this court will not imply a different one."). Employer's only recourse is through a Section 31(a) complaint brought to the appropriate United States Attorney, not before an ALJ. 33 U.S.C. §931(a)(2); *Valdez*, 34 BRBS at 77.

Accordingly, we reverse the ALJ's Order Denying Motions to Dismiss Based on Lack of Subject Matter Jurisdiction and Failure to State a Claim for Which Relief May Be

Granted and his Order Denying Reconsideration and Order Staying Discovery, we grant the interested parties' motion, and we dismiss the claim for lack of jurisdiction.[16]

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

[16] In the alternative, Claimant requests the Board grant her interlocutory appeal of the ALJ's Recon. Order, arguing the ALJ's stay on discovery and limiting the number of hearing witnesses deprives her of due process. Cl.'s Br. at 20-23. We decline to address this alternative argument, as it is rendered moot by both our holding that the ALJ lacks jurisdiction to grant Employer the relief it seeks and our dismissal of the claim.