

U.S. Department of Labor

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



BRB No. 21-0214

VELMA J. BENSON)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
AIR FORCE CENTRAL WELFARE FUND,)	
TRAVIS AFB)	
)	DATE ISSUED: 7/26/2022
and)	
)	
AIR FORCE INSURANCE FUND)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order Approving Settlement of Susan Hoffman, Administrative Law Judge, United States Department of Labor.

Matthew J. Witteman (Law Offices of Matthew J. Witteman), Sebastopol, California, for Claimant.

Before: BUZZARD, GRESH, and JONES, Administrative Appeals Judges

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Susan Hoffman’s Decision and Order Approving Settlement (2020-LHC-00087; 2020-LHC-00098) rendered on claims filed pursuant to 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.* (Act).¹ We must affirm the ALJ’s findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

During her employment with Employer in its Child Development Center, Claimant sustained an injury to her hand and lower back on March 17, 2017, and then subsequently on September 6, 2018, she injured her upper back and shoulder. Claimant filed claims under the Act. On December 7, 2020, the parties reached a settlement agreement under Section 8(i), 33 U.S.C. §908(i). The parties agreed to settle Claimant’s “claims for medical benefits in this matter by payments to [her] of \$1500 for past medical benefits and mileage, and \$22,500 for future medical benefits.” Joint 8(i) Application (Application) at 3.² The parties signed and submitted this agreement to the ALJ. Application at 4-5.

On December 11, 2020, the ALJ issued a Decision and Order approving the parties’ Section 8(i) settlement under the Act. Decision and Order (Order) at 1. She concluded the settlement was adequate and not procured by duress. *Id.* Furthermore, the ALJ found the attorney fee and costs were appropriate. *Id.* She also stated, “the parties filed a *Joint Application for Approval of Settlement Under 33 USC §908(i)* (the “Application”), which sets forth terms of settlement that would **resolve all claims for compensation** and medical benefits under Section 8(i)” *Id.* (bold emphasis added). Finally, the ALJ approved the settlement “in its entirety,” requiring Employer to “pay to Claimant the total amount of \$24,000.00 in full satisfaction of all claims for past and future medical benefits....” *Id.* at 2.

Claimant alleges the ALJ erred by stating the parties’ settlement agreement encompassed both “compensation and medical benefits,” as the agreement resolved only medical benefits. Claimant sought to resolve the inaccuracy in the ALJ’s Order by obtaining a stipulation from Employer; she was unsuccessful. Claimant then submitted an

¹ The Benefits Review Board’s processing of this case was substantially delayed due to the COVID-19 pandemic, which impacted the Board’s ability to obtain parts of the record from the Office of Administrative Law Judges and the Office of Workers’ Compensation Programs.

² The parties also agreed Employer would pay, and Claimant’s counsel would accept, \$24,000 as an attorney’s fee and \$5,580.72 in costs for services performed at both the Office of Workers’ Compensation Programs and the Office of Administrative Law Judges, totaling \$29,580.72. Application at 3-4. Neither the attorney fee nor any other portion of the settlement agreement is contested on appeal.

Amended Notice of Motion and Motion to Correct or Modify Judgment, urging the ALJ to modify her order to reflect the language in the settlement agreement. The ALJ did not respond or act on Claimant's motion. Consequently, Claimant filed this appeal, contending the ALJ's Order inaccurately reflects the extent of the settlement agreement. Claimant's Brief (Cl. Br.) at 6. She urges the Board to remand the matter to the ALJ for an order clarifying the approval of the settlement or, in the alternative, to hold the parties settled only her claims for medical benefits and not disability benefits. Cl. Br. at 6-7. Employer has not responded.

We agree with Claimant that the ALJ erred by inaccurately characterizing the parties' settlement agreement after having found the agreement adequate, not procured under duress, and having approved it. Cl. Br. at 2. By issuing an inaccurate order approving the settlement agreement, the ALJ's Order altered the settlement agreement and is not in accordance with law. Section 8(i), 33 U.S.C. §908(i), provides for the settlement of "any claims for compensation under this chapter." It states:

Whenever the parties to any claim for compensation under this chapter, including survivors [*sic*] benefits, agree to a settlement, the deputy commissioner or administrative law judge shall approve the settlement within thirty days unless it is found to be inadequate or procured by duress. Such settlement may include future medical benefits if the parties so agree. No liability of any employer, carrier, or both for medical, disability, or death benefits shall be discharged unless the application for settlement is approved by the deputy commissioner or administrative law judge. If the parties to the settlement are represented by counsel, then agreements shall be deemed approved unless specifically disapproved within thirty days after submission for approval.

33 U.S.C. §908(i)(1).

Where a claimant seeks to terminate her compensation and/or medical claims for a sum of money, Section 8(i) procedures must be followed. 33 U.S.C. §908(i)(1). Section 8(i) is the only means for compromising an employer's obligation to pay benefits under the Act. *See Henson v. Arcwel*, 27 BRBS 212 (1993); 20 C.F.R. §§702.241-702.243. The ALJ has four options when she receives a settlement agreement: 1) issue a deficiency notice if the application is incomplete; 2) approve the settlement if it is adequate and not procured by duress; 3) disapprove the settlement if it is inadequate or procured by duress; or 4) do nothing, and after thirty days the settlement agreement will be deemed approved. 20 C.F.R. §§ 702.242-702.243(b). If an ALJ finds the settlement is adequate and not procured by duress, and approves it, she cannot modify the agreement. *Losacano v. Electric Boat Corp.*, 48 BRBS 49 (2014). A settlement agreement approved by an ALJ becomes final if,

within thirty days, it is not appealed to the Board. *See Downs v. Texas Star Shipping Co., Inc.*, 18 BRBS 37 (1986), *aff'd sub nom. Downs v. Director, OWCP*, 803 F.2d 193, 19 BRBS 36(CRT) (5th Cir. 1986).

The plain language of the agreement states the parties did not intend to settle Claimant's disability benefits. In paragraph 6, the parties agreed:

Ms. Benson makes a claim herein for past medical benefits, or reimbursement for such benefits, and for future medical benefits under 33 USC § 907, *and not for disability or any other form of benefits*. Ms. Benson has continued to work at Respondent without claimed income loss throughout the period of that employment but plans to retire at the end of December 2020.

Application at 2 (emphasis added).

In contrast, the ALJ's Order states the parties submitted a document settling "all claims for compensation and medical benefits," yet she approved the settlement "in full satisfaction of all claims for past and future medical benefits." Order at 1-2. Her former statement indicates the parties agreed to settle *all* benefits which would be a clear mischaracterization of the terms of the settlement. Her latter statement characterizes the agreement correctly. As an ALJ is not permitted to alter the terms of a settlement agreement, even inadvertently, *Losacano*, 48 BRBS at 53; 20 C.F.R. §702.243(b), the ALJ's inconsistent statements in the Order approving the settlement are inaccurate. Because the ALJ approved the settlement, and no party challenges the approval, we modify the ALJ's Order to reflect the parties' intent. Specifically, we modify paragraph 1 of the ALJ's Order to eliminate the reference to resolving all claims for "compensation" to reflect that the agreement resolves only Claimant's claims for medical benefits.

Accordingly, for purposes of accuracy, we modify the ALJ's Decision and Order Approving Settlement in accordance with this decision. In all other respects, we affirm the Order.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge