

U.S. Department of Labor

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



BRB No. 24-0426

HAL BUNCH

Claimant-Petitioner

v.

TRIPLE CANOPY, INCORPORATED

and

ALLIED WORLD NATIONAL
ASSURANCE COMPANY

Employer/Carrier-
Respondents

NOT-PUBLISHED

DATE ISSUED: 07/24/2026

DECISION and ORDER

Appeal of the Ruling on Show Cause Order and Order of Dismissal and Ruling [on Claimant's Motion for Reconsideration] of Dan C. Panagiotis, Administrative Law Judge, United States Department of Labor.

Hal Bunch, Forest Hill, Texas.

Keith L. Flicker (Flicker, Garelick & Associates, LLP), New York, New York, for Employer and its Carrier.

Before: ROLFE, JONES, and ULMER, Administrative Appeals Judges.

PER CURIAM:

Claimant, without representation, appeals Administrative Law Judge (ALJ) Dan C. Panagiotis's Ruling on Show Cause Order and Order of Dismissal and Ruling [on Claimant's Motion for Reconsideration] (2023-LDA-04236) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C.

§§901-950 (Act), as extended by the Defense Base Act, 42 U.S.C. §§1651-1655 (DBA). In an appeal a claimant files without representation, the Benefits Review Board reviews the ALJ's decision below to determine if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with applicable law.¹ 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-362 (1965).

Claimant sustained work-related back and neck injuries on December 23, 2010, while working for Employer as a weapons instructor in Kuwait. On January 17, 2012, Claimant, with the assistance of counsel, entered into a Section 8(i) settlement, 33 U.S.C. §908(i), with Employer and its Carrier (Employer) for \$200,000 to “fully and finally dispose of any and all past, present, and future existing or potentially existing case issues relating to [the December 23, 2010] incident.” Stipulation of Settlement at 8. The district director approved the settlement on March 19, 2012. There is no dispute that the settlement became final thirty days after the district director approved it, and no party timely appealed it.²

On March 19, 2013, Claimant filed a new “claim,” without representation, contending he lacked the mental capacity to enter into a settlement agreement and lacked knowledge of his former attorney's “terminal illness,” and as a result, the settlement should be invalidated.³ Mar. 19, 2013 Pre-Hearing Statement at 1. At the July 21, 2014 hearing, Claimant stated he developed meningitis and dementia in December 2011 causing him to have “no cognitive ability to appreciate” the settlement. Hearing Tr. at 20, 41, 52-53.

¹ This case arises within the jurisdiction of the United States Court of Appeals for the Ninth Circuit because the office of the district director who handled this claim is located in California. 33 U.S.C. §921(c); *Glob. Linguist Sols., L.L.C. v. Abdelmeged*, 913 F.3d 921, 922 (9th Cir. 2019); *Hice v. Director, OWCP*, 156 F.3d 214, 218 (D.C. Cir. 1998) (“The location of . . . the district director[] who handled [the] claim determines the proper court to hear [the] appeal.”); Referral Letter (Sep. 19, 2024).

² The finality of the settlement agreement constitutes the law of the case. *See Reese v. Va. Int'l Terminals, LLC*, BRB No. 21-0100, slip op. at 4 (Apr. 28, 2021) (unpub.); *Kirkpatrick v. B.B.I., Inc.*, 39 BRBS 69, 70 n.4 (2005); *Ravalli v. Pasha Maritime Servs.*, 36 BRBS 91, 92 (2002); *Schaubert v. Omega Servs. Indus.*, 32 BRBS 233, 234 (1998); *Cooper v. John T. Clark & Son of Md., Inc.*, 14 BRBS 154, 154 (1981), *aff'd*, 687 F.2d 39 (4th Cir. 1982).

³ Six months after the parties reached the settlement agreement, Claimant's attorney died from pancreatic cancer. Jan. 12, 2015 Decision and Order at 3, 18.

However, Claimant conceded no doctor ever told him he lacked mental capacity, and he did not undergo any psychological testing or treatment. *Id.* at 46, 62-63. He testified that he received the \$200,000 settlement in 2012 and spent all of it in about ninety days, buying a \$30,000 Corvette and giving thousands of dollars to friends and family “because [he] was psychologically diminished” and did not have the “psychological ability to tell those people no.” *Id.* at 49-51. He also stated he did not understand that part of the settlement was supposed to go to future medical expenses and part of it was for his compensation benefits. *Id.* at 68-69. He said he now has the psychological ability to understand he should not have entered into a settlement agreement at that time and is “mentally competent” as of the date of the hearing, stating he “gradually [got] better” over time. *Id.* at 25, 47-48, 84-86.

On January 12, 2015, ALJ Lee J. Romero, Jr., issued a Decision and Order rejecting Claimant’s attempt to vacate the settlement, finding Claimant failed to establish either he or his attorney suffered from mental incapacity.⁴ Jan. 12, 2015 D&O at 17-19. He determined Claimant failed to produce medical evidence establishing a diagnosis of mental incompetence and, moreover, conceded he “never received such a diagnosis” from a doctor. *Id.* at 18 (citing Hearing Tr. at 46). ALJ Romero also stated that while Claimant’s attorney “died tragically and unexpectedly from pancreatic cancer shortly after the settlement,” Claimant failed to establish that his attorney’s illness caused him to have a mental incapacity “such that Claimant’s case was improperly handled.” *Id.* In addition, ALJ Romero determined the terms of the settlement agreement precluded Claimant’s attempts to have it overturned because Claimant was represented by counsel, his claim was mediated before a neutral arbitrator, and Claimant “expressly acknowledged he read the settlement agreement, and that he fully understood it.” *Id.* at 19 (citing Stipulation of Settlement at 11-12). Therefore, as the settlement was valid and “not subject to rescission,” the ALJ denied Claimant’s claim to vacate it.⁵ *Id.* at 19.

On February 13, 2023, Claimant filed another “new claim,” alleging a car crash in 2010 caused a traumatic brain injury and, therefore, the 2012 settlement agreement should be vacated. May 6, 2024 Ruling at 3; May 7, 2024 Order at 3. With this claim, Claimant

⁴ Claimant also filed a motion for partial summary decision, which ALJ Romero denied. Jan. 12, 2015 D&O at 15.

⁵ Claimant appealed ALJ Romero’s Decision and Order to the Board, which dismissed it as untimely, *Bunch v. Triple Canopy, Inc.*, BRB No. 15-0195 (Apr. 17, 2015) (Order), and then denied his motion for reconsideration, *Bunch v. Triple Canopy, Inc.*, BRB No. 15-0195 (Sep. 18, 2015) (Order on Mot. for Recon.). The United States Court of Appeals for the Fifth Circuit dismissed Claimant’s appeal of the Board’s orders as untimely. *Bunch v. Director, OWCP*, No. 22-60637 (5th Cir. Jan. 11, 2023).

filed several motions, all of which ALJ Panagiotis (the ALJ)⁶ denied for lack of evidence.⁷ May 6, 2024 Ruling at 17; May 7, 2024 Order at 10. Employer responded to Claimant's motions, asserting his request to vacate the settlement is "an attempt to relitigate issues that have already been finally and fully adjudicated." Employer's Resp. at 2-3. In reviewing Claimant's claim, the ALJ found "it is clear that he is trying to overturn [ALJ] Romero's previous holdings in this case and re-litigate the very same issues." May 7, 2024 Order at 9. The ALJ recognized the parties are the same as in the original action, ALJ Romero had subject matter jurisdiction under the Act, ALJ Romero rendered a final judgment on the merits of Claimant's previous attempt to vacate the settlement agreement, and the same claim was previously adjudicated. *Id.* at 9-10. Therefore, he found res judicata "must be examined" and ordered Claimant to show cause why this case should not be dismissed. *Id.*

On August 8, 2024, the ALJ issued a Ruling on Show Cause Order and Order of Dismissal (Order), the subject of the current appeal. He noted Claimant responded to the show cause order with a "continued diatribe" against opposing counsel and a "passing reference" to being mentally diminished. Order at 2; Claimant's Show Cause Br. at 127-128 (unpaginated). The ALJ observed, however, that Claimant made no argument as to why res judicata should not apply and instead "offer[ed] nothing to distinguish his present claim from his previous attempt to revoke the agreement to settle his case in 2012." Order at 2. Therefore, the ALJ dismissed the claim with prejudice and denied "[a]ny and all other pending motions" as moot.⁸ *Id.* at 3. The ALJ also denied Claimant's motion for reconsideration.

⁶ Following ALJ Romero's retirement, the Office of Administrative Law Judges (OALJ) reassigned the case to ALJ Panagiotis (the ALJ). May 6, 2024 Ruling at 2 n.10; Order Vacating Hearing and Transferring Case.

⁷ Claimant filed the following motions: to expedite the proceedings; to disqualify the OALJ Covington Office; to transfer the case to Washington, DC; to disqualify opposing counsel; for partial summary decision to invalidate the settlement under Section 22, 33 U.S.C. §922; and for the ALJ to award "tort damages." May 6, 2024 Ruling at 6-17; May 7, 2024 Order at 3-10; Claimant's Mots.

⁸ On August 8, 2024, the ALJ denied Claimant's motion for reconsideration of the motions he filed as he failed to establish a change in controlling law or newly discovered, previously unavailable evidence. Aug. 8, 2024 Ruling at 3. Instead, the ALJ noted Claimant's motion "describe[d] a generalized history of the claim and [his] dissatisfaction with [the rulings]." *Id.* at 4.

On appeal, Claimant generally challenges the ALJ's order dismissing his claim with prejudice. He maintains the 2012 settlement was fraudulently secured because he was incapacitated at the time and the ALJ should have set aside the agreement. Employer responds, urging the Board to affirm the ALJ's findings.

Section 8(i), 33 U.S.C. §908(i), governs settlements of claims under the Act. 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 (2014); *Richardson v. Huntington Ingalls, Inc.*, 48 BRBS 23, 24 (2014); *McPherson v. Nat'l Steel & Shipbuilding Co.*, 26 BRBS 71, 72 (1992), *aff'd on recon.*, 24 BRBS 224 (1991) (en banc). Once approved, the effect of the settlement is to completely discharge the employer's liability for the claimant's injury. 33 U.S.C. §908(i)(3); *Diggles v. Bethlehem Steel Corp.*, 32 BRBS 79, 81 (1998); 20 C.F.R. §702.243(b). Additionally, once a settlement is approved and the time for appeal to the Board has expired, it is binding on the parties and is not subject to rescission. *Diggles*, 32 BRBS at 82; *Porter v. Kwajalein Servs., Inc.*, 31 BRBS 112, 113 (1997), *aff'd on recon.*, 32 BRBS 56 (1998). Settlements also are not subject to Section 22 modification. 33 U.S.C. §922. The Board has held Sections 21 and 22 "are the exclusive means for setting aside a compensation order," precluding the ALJ from reopening a settlement on allegations of fraud. *McRae v. SSA Terminals, LLC*, 59 BRBS 43, 46-47 (2025);⁹ *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.

As Claimant did not timely appeal the order approving his settlement, and as settlements are not subject to modification, Claimant sought to reopen his settlement by

⁹ In *McRae*, the employer sought to cancel a settlement due to the claimant's alleged fraud. The Board rejected the employer's arguments and kept the settlement intact. It reasoned that the ALJ's authority cannot extend beyond the statutory language of the Act, and the language in *Downs v. Texas Star Shipping Co.*, 18 BRBS 37, 40 (1986), *aff'd sub nom. Downs v. Director, OWCP*, 803 F.2d 193 (5th Cir. 1986), stating the possibility of reopening a settlement as a matter of equity if a party establishes it was fraudulently secured, is dicta. Consequently, the Board held the ALJ does not have equitable authority to reopen a final order approving a settlement because Sections 21 and 22 are the only means under the Act for affecting a final compensation order. The Board also noted the employer's only remedy against fraudulent claims under the Act is 33 U.S.C. §931(a). *McRae*, 59 BRBS at 46-48.

filing a “new claim.” Recognizing the issues had been addressed previously, the ALJ considered the matter under the doctrine of res judicata.

Res judicata, also known as claim preclusion, requires a showing of the following three elements: (1) a final judgment on the merits in an earlier suit; (2) an identity of the cause of action in both the earlier and later suits; and (3) an identity of the parties or their privies in the two suits. *Costantini v. Trans World Airlines*, 681 F.2d 1199, 1201 (9th Cir. 1982); see *Figueroa v. Campbell Indus.*, 45 F.3d 311, 315 (9th Cir. 1995); *Holmes v. Shell Offshore, Inc.*, 37 BRBS 27, 28 (2003). The “most important” inquiry is whether the new claim arises out of “the same transactional nucleus of facts.” *Costantini*, 681 F.2d at 1201; Restatement (Second) of Judgments §24. Under the doctrine of res judicata, when a final judgment has been entered on the merits of a case:

[I]t is a finality as to *the claim* or demand *in controversy*, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.

Guinness PLC v. Ward, 955 F.2d 875, 893-894 (4th Cir. 1992) (citing *Cromwell v. Cnty. of Sac*, 94 U.S. 351, 352 (1876)); see Restatement (Second) of Judgments §§24-25. Thus, where a party seeks to refile the same claim, the second claim is precluded as to those issues actually litigated and those which might have been litigated. *Id.*

Here, all three elements are met. First, in 2012, the district director approved the parties’ settlement, resolving Claimant’s claim for benefits. When Claimant filed a “new claim” in 2013, challenging the validity of the settlement, ALJ Romero addressed Claimant’s arguments that he was “mentally incompetent to enter into a Section 8(i) Settlement Agreement.” Jan. 12, 2015 D&O at 2. He addressed all of Claimant’s arguments and rejected them for lack of evidence.¹⁰ *Id.* at 18. His decision finding the settlement valid and rejecting Claimant’s request to vacate it became final when it was not appealed. In 2023, when Claimant filed another “new claim,” he again sought to set aside the 2012 settlement due to his alleged mental incapacity at that time – the same cause of action as the 2013 claim. And, finally, the parties to the actions are also the same. The

¹⁰ In addition, ALJ Romero found “the settlement agreement itself preclude[d] Claimant’s attempt to have it overturned” because the “clear and plain terms” included language to ensure Claimant was competent and understood the agreement, to discharge Employer from liability, and to terminate Claimant’s right to future benefits including psychological injuries stemming from the work accident. Jan. 12, 2015 D&O at 18 (citing Stipulation of Settlement at 10-12).

elements for applying res judicata are satisfied, and the ALJ correctly did so.¹¹ *Costantini*, 681 F.2d at 1201-1202. It is irrelevant how many additional or derivative arguments Claimant may make in favor of rescinding the settlement order based on the evidence at hand as he had the opportunity to present those arguments the first time he attempted to have the settlement order vacated. *Ward*, 955 F.2d at 893-894; *Costantini*, 681 F.2d at 1201-1202.

Accordingly, we affirm the ALJ's Ruling on Show Cause Order and Order of Dismissal and Ruling [on Claimant's Motion for Reconsideration].

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge

¹¹ Although Claimant's attempt at vacating the settlement included what he asserts was new evidence and a new diagnosis, the ALJ reasonably found Claimant "has offered evidence of neither." Order at 2; Claimant's Reply at 18-19 (unpaginated). Instead, despite having informed Claimant of the res judicata elements to address, the ALJ found Claimant's response to the show cause order made only "allegations of conspiracies and accusations of bad faith but offer[ed] no actual evidence to support such statements." Order at 2.