U.S. Department of Labor

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

BRB No. 24-0056

TERRY D. REESE, SR. Claimant-Petitioner v. VIRGINIA INTERNATIONAL TERMINALS, LLC and SIGNAL MUTUAL INDEMNITY ASSOCIATION, LTD. c/o SAGE ADJUSTING, LLC Employer/Carrier-Respondent CP & O, LLC and PORTS INSURANCE COMPANY c/o PORTS AMERICA Employer/Carrier	)	**NOT-PUBLISHED** DATE ISSUED: 06/16/2025 DECISION and ORDER

Appeal of the Order of Dismissal of Paul C. Johnson, Jr., Administrative Law Judge, United States Department of Labor.

Terry D. Reese, Sr., Chesapeake, Virginia.

F. Nash Bilisoly (Woods Rogers Vandeventer Black PLC), Norfolk, Virginia, for Employer Virginia International Terminals, LLC and Carrier Signal Mutual Indemnity Association, Ltd. c/o Sage Adjusting, LLC.

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

PER CURIAM:

Claimant, appearing without representation,[1] appeals Administrative Law Judge (ALJ) Paul C. Johnson's Order of Dismissal (2023-LHC-00495, 2023-LHC-00496, 2023-LHC-00497, 2023-LHC-00806) rendered on claims filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901-950 (Act).[2] We will review the ALJ's dismissal of Claimant's claim under the abuse of discretion standard. *See, e.g., Goforth v. Owens*, 766 F.2d 1533 (11th Cir. 1985); *Taylor v. B. Frank Joy, Co.*, 22 BRBS 408 (1989).

This is the second time these claims are before the Benefits Review Board following Claimant's attempt to vacate settlement agreements the district director approved in February 2018. The settlement agreements in question cover four claims: two against Employer Virginia International Terminals, LLC (VIT), for injuries sustained in 2005 and 2006,[3] and two against CP&O, LLC (CP&O), for injuries allegedly sustained in 2011 and

[1] Although Claimant filed this appeal pro se, he was represented by counsel prior to and at the time he settled his claims and was represented by a lay person during his first appeal.

[2] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant sustained his injuries in Virginia. 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).

[3] On June 9, 2011, ALJ Daniel A. Sarno awarded Claimant past-due temporary total disability (TTD) benefits and continuing temporary partial disability (TPD) benefits for the 2005 and 2006 injuries. Claimant's Exhibit (CX) 10. ALJ Sarno adjusted the dates and amount of Claimant's entitlement via an Order on Reconsideration and Errata Order issued on July 26, 2011, but upheld Claimant's continuing entitlement to TPD benefits. Employer subsequently sought modification of the award based on Claimant's return to regular employment, which ALJ Kenneth A. Krantz granted on November 1, 2012, thereby terminating Claimant's benefits. Claimant appealed ALJ Krantz's order (BRB No. 13-0084), but on April 24, 2013, the Board remanded the claim to the Office of Administrative

2014. In January 2018, Claimant (who was represented by counsel at the time) signed the settlement agreements indicating a gross settlement amount of $398,000 for all four pending claims.[4] The district director issued orders approving these settlements on February 2, 2018. 33 U.S.C. §908(i); *see* Claimant's Exhibits (CXs) 20V at 3, 20C at 2. There is no dispute these settlements became final thirty days after the district director approved them, and no party timely appealed.[5]

In January 2019, Claimant, proceeding without counsel, sought to vacate the 2018 Section 8(i) settlement orders and have his claims reinstated, alleging he was fraudulently induced to enter into the agreements. His claims were consolidated, referred to the OALJ, and assigned to ALJ Dana Rosen. On November 18, 2020, ALJ Rosen issued a Decision and Order Granting Employers' Motions for Summary Decision and Decision and Order Denying and Dismissing Claim, finding no genuine issue of fact as to the following: Claimant signed the settlement applications on January 3, 2018; Claimant initialed a section of the settlement applications indicating he approved that the settlements terminated his claims for compensation and medical benefits; Claimant signed and dated a section of the settlement applications certifying and affirming the settlement amount was adequate and denying "intimidation, pressure, coercion or duress;" Claimant was

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Law Judges (OALJ) following Claimant's submission of a petition for modification. *See* CX 17.

[4] According to the settlement applications, VIT agreed to pay $140,000 for resolution of the July 2005 and May 2006 injuries, and CP&O agreed to pay $215,000 for resolution of the July 2011 and January 2014 injuries. CP&O also agreed to waive $43,000 of its lien against Claimant's third-party recovery for injuries arising out of the January 2014 injury. *See Reese v. Seaspan Ship Management, Ltd., et al.*, Case No. 2:15-cv-550-MSD-RJK. $140,000 + $215,000 + $43,000 = $398,000. The settlement applications indicate Claimant also settled his third-party claim for a gross amount of $435,000, and his Virginia state workers' compensation claim against VIT for a gross amount of $20,000. CXs 20V at 11-15, 20C at 5-10. In all, the gross settlement amount resulting from the resolution of all four claims across all venues and with all parties totaled $853,000. CX 20V at 15.

[5] The finality of the settlement agreements 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) (unpublished); *Kirkpatrick v. B.B.I., Inc.*, 39 BRBS 69, 70 n.4 (2005); *Ravalli v. Pasha Maritime Services*, 36 BRBS 91, 92 (2002); *Schaubert v. Omega Services Industries*, 32 BRBS 233, 234 (1998); *Cooper v. John T. Clark & Son of Maryland, Inc.*, 14 BRBS 154, 154 (1981), *aff'd*, 687 F.2d 39 (4th Cir. 1982).

represented by counsel at the time of the settlements; his counsel was present at the mediations and signed the settlement applications along with Claimant; the district director approved the signed settlement applications; and Claimant did not appeal the settlements within thirty days. CX 8 at 9-10 (*see* CX 20V at 3, 19-20; CX 20C at 2, 16-18). In the absence of any genuine dispute regarding the finality of the settlement orders, ALJ Rosen denied Claimant's request to vacate the settlements and reinstate his claims. *Id*. at 10.

Claimant appealed to the Board,[6] arguing the settlements were inadequate and should be set aside because they were obtained through fraud on the court; he also alleged ALJ Rosen demonstrated bias by granting Employers a protective order preventing disclosure of the mediation discussions prior to settlement and by denying him a hearing on the merits. *Reese v. Va. Int'l Terminals, LLC*, BRB No. 21-0100, slip op. at 3 (Apr. 28, 2021) (unpub.). Noting both Claimant and his counsel signed the settlement agreements attesting to their adequacy, the Board upheld the ALJ's finding that Claimant's inadequacy argument was time-barred in accordance with Section 21(a) of the Act, 33 U.S.C. §921(a). The Board acknowledged "the Section 21(a) statute of limitations may permit" challenges based on "equitable considerations" but found Claimant's allegations of fraud failed to "meet the high bar necessary to establish fraud on the court" as the evidence he presented "did not affect the integrity of the claims process."[7] *Reese*, slip op. 5-6. In addition, the Board upheld ALJ Rosen's protective order against disclosure of mediation discussions and rejected Claimant's allegations of bias.[8] *Id*., slip op. 6-7.

Despite the finality of the Board's Order, Claimant once again sought to have the settlement agreements vacated and his claims reinstated. On June 14, 2023, ALJ Johnson issued a Notice of Assignment/Order Consolidating Cases/Order to Show Cause (OSC).

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[6] At the time of his first appeal, Claimant had retained a lay representative, Lamarr Brown.

[7] Claimant primarily relied on a December 22, 2016 letter from his attorney Robert E. Walsh to ALJ Johnson requesting remand of the claim due to settlement. CX 16; *see also* CX 9. Specifically, Claimant attests no settlement had been reached and accuses his attorney of colluding with Employers' attorneys to deprive him of a hearing. Subsequently, Claimant fired Mr. Walsh and retained attorney Ralph Rabinowitz, who represented him at the time he signed the settlement agreements in January 2018.

[8] Claimant twice sought reconsideration of the Board's Order, but the Board summarily denied both motions. *Reese v. Va. Int'l Terminals, LLC*, BRB No. 21-0100 (Jun. 30, 2021) (unpub.); *Reese v. Va. Int'l Terminals, LLC*, BRB No. 21-0100 (Oct. 29, 2021) (unpub.).

He noted ALJ Rosen previously found the settlements were final and the Board affirmed her decision. Thus, he ordered Claimant to show cause as to "why these cases should not be dismissed on the basis that the underlying claims have been settled, and the settlement is final." OSC at 2.

After review of Claimant's response and the attached forty-five exhibits, ALJ Johnson issued an Order of Dismissal (OD) on October 27, 2023. He found many of Claimant's arguments precluded by the principle of res judicata, having been previously rejected by the Board. OD at 4-6. Further, he found factual errors committed by ALJ Rosen inconsequential.[9] *Id*. at 5. ALJ Johnson rejected Claimant's "newly discovered evidence" on the grounds that every exhibit, except one, pre-dated both of the settlement agreements and Claimant's first attempt to vacate them,[10] and Claimant failed to show why he could not have obtained and submitted this evidence to ALJ Rosen or how it would have affected Claimant's decision to sign the settlement applications. *Id*. ALJ Johnson concluded:

> Claimant has presented insufficient evidence for me to conclude that his agreement to settle his claims was fraudulently induced or should be set aside for any other equitable reason. The settlement is final, and these matters will therefore be dismissed.

Id.

Claimant appeals. He requests the settlement orders be vacated and his claims be reinstated so they can proceed to a hearing. Claimant asserts he has been deprived of his right to a hearing through fraudulently concealed evidence withheld by both his own and Employers' attorneys, whom he jointly accuses of collusion, fraud on the court, and racial

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[9] Claimant pointed to two specific factual errors in ALJ Rosen's Order: her statement that no compensation orders had been issued for these claims "by any Administrative Law Judge" (overlooking ALJ Sarno's June 2011 compensation order) and her finding that all four claims had at one point been assigned to and remanded by ALJ Johnson (the July 2011 claim was not). *See* CX 8 at 5, 7-8.

[10] According to the ALJ, the only exhibit that did not pre-date the settlement or Claimant's attempts to vacate it was a medical report from Claimant's chosen treating physician Dr. Arthur Wardell dated November 1, 2019. OD at 6 (citing CX 30). Claimant argued the evaluation documented in the report should have been conducted in 2014, but ALJ Johnson found Claimant failed to argue that if it had been conducted in 2014, it would have affected Claimant's decision to sign the settlement applications. *Id*.

discrimination.[11] Employer VIT responds[12] urging affirmance, and Claimant submitted a reply brief.

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. Electric Boat Corp.*, 48 BRBS 49, 51 (2014); *Richardson v. Huntington Ingalls, Inc.*, 48 BRBS 23, 24 (2014); *McPherson v. National Steel & Shipbuilding Co.*, 26 BRBS 71, 72 (1992), *aff'g on recon. en banc,* 24 BRBS 224 (1991). 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); 20 C.F.R. §702.243(b); *Diggles v. Bethlehem Steel Corp.*, 32 BRBS 79, 81 (1998). Additionally, once a settlement is approved and the time for appeal to the Board has expired, it is binding on the parties and not subject to rescission. *Diggles*, 32 BRBS at 82; *Porter v. Kwajalein Services, 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, however, has stated there may be a possibility of re-opening a settlement as a matter of equity if a party establishes it was fraudulently secured. *Downs v. Texas Star Shipping Co., Inc.,* 18 BRBS 37, 40 (1986), *aff'd sub nom. Downs v. Director, OWCP*, 803 F.2d 193 (5th Cir. 1986).

Claimant maintains this is exactly what happened. Nevertheless, we must affirm the ALJ's dismissal order. The Board's prior order constitutes the law of the case regarding the finality of the settlement orders, and the principle of *res judicata* precludes Claimant from prevailing on equitable grounds.

When a case is before the Board for a second time, and the same issue is raised in the second appeal, the Board generally holds that its prior decision is "the law of the case," and it will not reexamine that issue. *Kirkpatrick*, 39 BRBS at 70 n.4; *Ravalli*, 36 BRBS at

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[11] On December 16, 2023, the day after Claimant timely filed his Petition for Review, he submitted a Revised Petition for Review providing additional support for his accusations of misrepresentation and undue influence of his own and Employers' attorneys. On August 21, 2024, Claimant filed a Supplemental Brief, in which he repeated his arguments regarding fraudulent concealment of records and expounded on the mishandling of records by both the ALJ and the district director, and on his allegations of racial discrimination and retaliation. Although Claimant did not request leave to file a supplemental brief, additional briefs may be allowed within the Board's discretion, and we accept this brief into the record. 20 C.F.R. §802.215.

[12] Employer CP&O did not respond.

92; *Schaubert*, 32 BRBS at 234; *Cooper*, 14 BRBS at 154. However, the law of the case doctrine is not an absolute bar when a tribunal is reviewing its own order. *Gladney v. Ingalls Shipbuilding, Inc.*, 33 BRBS 103, 107 (1999) ("[T]he law of the case doctrine is not a rule of law but, rather, a discretionary rule of practice used to promote finality in the adjudication process…."); *Ortiz v. Todd Shipyards Corp.*, 25 BRBS 228, 234 (1991); *Stokes v. George Hyman Constr. Co.*, 19 BRBS 110, 114 n.6 (1986). Both the Fourth Circuit (within whose jurisdiction this case arises) and the Board have declined to apply the doctrine in instances where there has been a change in the underlying factual situation, intervening controlling authority demonstrates the initial decision was erroneous, or the first decision was clearly erroneous and to let it stand would produce a manifest injustice. *See, e.g., Fusaro v. Howard*, 19 F.4th 357, 367 (4th Cir. 2021); *Gladney*, 33 BRBS at 107; *Jones v. U.S. Steel Corp.*, 25 BRBS 355, 359 (1992); *Stokes*, 19 BRBS at 114. However, none of these exceptions apply to this case.

Moreover, the ALJ rationally found the principle of *res judicata* applies to these claims, thereby precluding the ALJ from revisiting Claimant's arguments. The application of *res judicata* or 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. *Keith v. Aldridge*, 900 F.2d 736, 739 (4th Cir.), *cert. denied*, 498 U.S. 900 (1990) (citing *Nash County Bd. of Educ. v. Biltmore Co.*, 640 F.2d 484, 486 (4th Cir.), *cert. denied*, 454 U.S. 878 (1981)); *Holmes v. Shell Offshore, Inc.*, 37 BRBS 27, 28 (2003). "[T]he appropriate inquiry is whether the new claim arises out of same transaction or series of transactions as the claim resolved by the prior judgment." *Hartnett v. Billman*, 800 F.2d 1308, 1313 (4th Cir. 1986), *cert. denied*, 480 U.S. 932 (1987); Restatement (Second) of Judgments §24. In this case, all three conditions are met: 1) the Board has previously issued a final order affirming the ALJ's refusal to vacate the 2018 settlement orders; 2) Claimant's second appeal is seeking identical relief on identical grounds; and 3) the same parties are involved.

Although Claimant's second attempt at vacating the settlement orders includes what he asserts is "newly discovered evidence," ALJ Johnson reasonably found a significant portion of the evidence upon which Claimant relies pre-dated both the signing of the settlement applications and the issuance of the settlement orders and, therefore, was available to him upon his first attempt to vacate the settlement orders in 2019. 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. County 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 issues actually litigated and those which might have been litigated. In other words, it is irrelevant how many additional or derivative arguments Claimant may make in favor of rescinding the settlement orders based on the evidence at hand – he had the opportunity to present those arguments the first time he attempted to have the settlement orders vacated. The only issue before us – whether the equitable consideration of fraud justifies rescinding settlement orders issued in 2018 – has already been addressed and decided.

Accordingly, we affirm the ALJ's Order of Dismissal.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge