

U.S. Department of Labor

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



BRB No. 24-0362

IVICA TRAJKOVSKI

Claimant-Petitioner

v.

FLUOR CONOPS, LIMITED

and

INSURANCE COMPANY OF THE STATE
OF PENNSYLVANIA

Employer/Carrier-
Respondents

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR

Respondent

NOT-PUBLISHED

DATE ISSUED: 06/03/2026

DECISION and ORDER

Appeal of the Order Granting Employer's Motion for Summary Decision and Denying Claimant's Claim for Benefits of Pamela A. Kultgen, Administrative Law Judge, United States Department of Labor.

Damir Junicic (Law Office of Damir Junicic), Indianapolis, Indiana, for Claimant.

Billy J. Frey and Gabrielle V. McBee (Thomas Quinn, LLP), San Francisco, California, for Employer and Carrier.

Ann Marie Scarpino (Jonathan Berry, Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for Administrative Appeals), Washington, D.C., for the 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:

Claimant appeals Administrative Law Judge (ALJ) Pamela A. Kultgen's Order Granting Employer's Motion for Summary Decision and Denying Claimant's Claim for Benefits (2023-LDA-04912) 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). Review of an order for summary judgment is *de novo*, with all ambiguities and inferences interpreted in favor of the non-moving party.¹ *Eisenhauer v. Culinary Inst. of Am.*, 84 F.4th 507, 515 (2d Cir. 2023).

Claimant worked for Employer as a service desk specialist in Afghanistan from September 2010 to November 2013. Employer's Motion for Summary Decision Exhibit (MSD EX) A at 3. On August 19, 2014, Claimant began treating with chest and cardiovascular surgeon Dr. Georgievski Slavko for symptoms of headaches, exhaustion, chest pain, and dizziness. *Id.* at 19-20. Over the next five years, Claimant saw Dr. Slavko three more times, reporting the same symptoms as well as insomnia, difficulty concentrating, and nervousness. *Id.* at 21, 23, 25. On March 7, 2020, Dr. Slavko learned, apparently for the first time, that Claimant had worked in a war zone, but noted Claimant did not want to talk about it. *Id.* at 27. He referred Claimant to a neuropsychologist. *Id.*

Claimant began treating with neuropsychologist Dr. Risto Ljupcev on May 10, 2020. MSD EX A at 34-35. Dr. Ljupcev diagnosed Claimant with post-traumatic stress

¹ This case arises within the jurisdiction of the United States Court of Appeals for the Second Circuit because the office of the district director who handled this claim is located in New York. 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 (Aug. 16, 2024). The Director's, Office of Workers' Compensation Programs (Director), reference to the United States Court of Appeals for the Eleventh Circuit, *see* Director's Response Brief (Dir. Resp. Br.) at 2 n.1, is mistaken.

disorder (PTSD) and opined he was unable to work at military bases. *Id.* at 34. The record indicates Claimant treated with Dr. Ljupcev five more times through April 9, 2021. *Id.* at 36-41, 43-44, 46-47.

On November 3, 2020, Claimant filed a claim alleging a psychological injury as a result of his employment with Employer (2020 claim). On February 23, 2022, Claimant and Employer entered into a settlement agreement under Section 8(i) of the Act, 33 U.S.C. §908(i), which they agreed “encompasses[ed] the resolution of Claimant’s psychological condition and the physical symptoms arising thereof, including any pulmonary or hearing loss claims.” MSD EX A at 4. On March 11, 2022, the district director issued an order approving the settlement agreement. MSD EX C.

On September 30, 2022, Claimant sought treatment at a pulmonology and allergology clinic with complaints of difficulty breathing “for a long time” and a dry cough that was increasing in intensity. MSD EX E at 6. He reported exposure to “combustion and toxic gases” while employed in Afghanistan. *Id.* Following a pulmonary function test, Claimant was diagnosed with “J44,” which he explains is the code for obstructive pulmonary disease. *Id.* at 6-7, 9-10; Claimant’s Brief (Cl.’s Br.) at 8. Claimant subsequently filed a claim for compensation for a respiratory condition arising out of his employment for Employer in Afghanistan, claiming injuries to his “lungs, throat, mouth, nose, bronchi, [and] sinuses” (2022 claim).² MSD EX E at 2. Claimant’s claim for compensation further indicated that the respiratory condition is caused by his environmental exposure while working with Employer. *Id.*

On May 21, 2024, Employer filed a motion for summary decision, before the case was assigned to the ALJ and, therefore, before any discovery or hearing had taken place, arguing the settlement agreement and the March 11, 2022 order approving the settlement preclude Claimant’s 2022 claim. Employer’s Motion for Summary Decision (MSD) at 4-10. Claimant responded, asserting a dispute existed as to whether the respiratory condition underlying his 2022 claim was in existence at the time of the Section 8(i) settlement agreement and, therefore, Employer’s motion should be denied. *See* Claimant’s Response to Employer’s MSD.

On June 27, 2024, the ALJ issued an Order Granting Employer’s Motion for Summary Decision and Denying Claimant’s Claim for Benefits (Order). The ALJ found Claimant’s assertion that the respiratory condition that formed the basis of his 2022 claim was not in existence at the time the parties entered into the settlement agreement was “unavailing” because the terms of the agreement unequivocally and specifically included

² Claimant’s Claim Form LS-203 is undated. MSD EX E at 2. Claimant asserts he filed it on November 1, 2022. Cl.’s Brief at 3.

Claimant's right to compensation for a work-related pulmonary injury. Order at 4-5. She found the terms "respiratory" and "pulmonary" to be "inextricably intertwined," especially considering Claimant noted his diagnosed respiratory condition was for a "pulmonary" disease. *Id.* at 5. The ALJ granted Employer's motion and dismissed the claim, finding no genuine dispute of material fact existed and that Claimant's 2022 claim for a work-related respiratory condition was resolved as part of the settlement agreement. *Id.* at 7.

Claimant appeals, contending the ALJ erred in finding no genuine issue of material fact exists as to whether the settlement agreement covers his 2022 claim. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs (Director), also responds, urging the Board to vacate the ALJ's order and remand the case for a hearing because a factual dispute exists over whether Claimant's 2022 claim was "in existence" at the time of the settlement agreement. Director's Response Brief (Dir. Resp. Br.) at 1, 3.

The Board reviews summary decision orders *de novo*. *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 465 n.10 (1992); *Taggart v. Time Inc.*, 924 F.2d 43, 45-46 (2d Cir. 1991). When deciding whether to grant summary decision, the ALJ must consider the evidence in the light most favorable to the non-moving party and shall grant summary decision if the moving party shows there are no genuine disputes as to any material fact. 29 C.F.R. §18.72; *O'Hara v. Weeks Marine, Inc.*, 294 F.3d 55, 61 (2d Cir. 2002); *R.V. [Villaverde] v. J. D'Annunzio & Sons*, 42 BRBS 63, 64 (2008). A fact is considered "material" if it could influence the outcome of the case under the applicable law, and an issue is "genuine" if a reasonable jury might rule in favor of the party not seeking summary judgment. *Id.* Moreover, the party seeking summary judgment bears the initial burden of demonstrating there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Only then does the burden shift to the non-moving party to survive the motion by demonstrating specific, material facts that give rise to a genuine issue. *Id.* In that regard, to defeat a motion for summary decision, the non-moving party must present "specific facts" showing there exists "a genuine issue for trial." *Matsushita Elec. Indus. Co., Ltd., v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). If the ALJ could find for the non-moving party, or if it is necessary to weigh evidence or make credibility determinations on the issue presented, summary decision is inappropriate. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248 (1986).

As the moving party, Employer bears the initial burden of demonstrating there is no genuine issue of material fact that the parties' previous settlement agreement covers Claimant's 2022 claim for a respiratory condition that he alleges was caused by his environmental exposure while working with employer. *Celotex*, 477 U.S. at 323. The ALJ found Employer met this burden as the language of the settlement agreement unequivocally included Claimant's right to compensation for a work-related pulmonary injury. D&O at

6.

We disagree. Section 8(i) of the Act provides that parties may settle “any claim for compensation under this chapter.” 33 U.S.C. §908(i). Settlements under the Longshore Act are contracts that bind the parties who agree to them; once approved, the effect of a settlement is to discharge the employer’s liability for injuries that are the subject of the agreement. 33 U.S.C. §908(i)(3); 20 C.F.R. §702.243(b); *see, e.g., Diggles v. Bethlehem Steel Corp.*, 32 BRBS 79, 81 (1998). However, “[a]n agreement among the parties to settle a claim is limited to the rights of the parties and to claims then in existence.” 20 C.F.R. §702.241(g). Because they are contracts, interpretation of settlements under the Act (as with any civil settlement) must give full effect to the parties’ agreement. *Powell v. Omnicom*, 497 F.3d 124, 128 (2d Cir. 2007). Thus, if the language of the agreement is clear and unambiguous “its meaning must be determined from the four corners of the instrument without resort to extrinsic evidence of any nature.” *McReynolds v. Richards–Cantave*, 588 F.3d 790, 803 (2d Cir. 2009) (quoting *Goldman v. C.I.R.*, 39 F.3d 402, 405–406 (2d Cir. 1994)).

Contrary to the ALJ’s finding, the language of the parties’ settlement agreement is not clear and unambiguous. Rather, there is ambiguity within the document as to whether it covers any work-related pulmonary injury or only pulmonary symptoms arising out of Claimant’s work-related psychological injury claim. The agreement initially states it “encompasses the resolution of Claimant’s psychological condition and the physical symptoms *arising thereof, including any pulmonary or hearing loss claims.*” MSD EX A at 3 (emphasis added). This statement suggests the only pulmonary conditions covered are those arising out of the underlying employment-related psychological injury. But later in the same document, in a footnote breaking down the allocation of funds, the agreement indicates “[t]he parties allocate \$500.00 to any pulmonary injury (*be it direct injury or sequela of the psychological injury*).” *Id.* at 7 n.2 (emphasis added). Arguably inconsistent with the previous language, this footnote suggests the terms of the settlement could cover any work-related pulmonary injury or any pulmonary complaints associated directly with or as a sequela of the underlying psychological injury.

The ambiguous language of the settlement agreement creates a genuine issue of material fact regarding whether the respiratory condition that is the subject of Claimant’s 2022 claim is covered by the terms of the settlement. 20 C.F.R. §702.241(g); *J.H. v. Oceanic Stevedoring Co.* [*Hodge*], 41 BRBS 135, 136 (2008); *see* MSD EX E at 2. Consequently, summary judgment is inappropriate at this time, and we vacate the ALJ’s order granting it and return this case for further factual development and a hearing, barring factual developments that make the hearing unnecessary. 29 C.F.R. §18.72; *Anderson*, 477 U.S. at 247-248; *O’Hara*, 294 F.3d at 61; *Villaverde*, 42 BRBS at 64. On remand, the ALJ must weigh the evidence and determine whether the 2022 settlement agreement

encompasses Claimant’s 2022 respiratory injury and whether that injury existed at the time the parties entered into the settlement agreement. *See Anderson*, 477 U.S. at 253-254. Additionally, the ALJ should determine whether the newly-claimed respiratory condition includes injuries to the “lungs, throat, mouth, nose, bronchi, [and] sinuses” – that is, is it one all-encompassing condition or are they separate injuries, distinct from Claimant’s pulmonary condition.³

Accordingly, we vacate the ALJ’s Order Granting Employer’s Motion for Summary Decision and Denying Claimant’s Claim for Benefits and remand for further proceedings in accordance with this Order.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

³ While the settlement agreement, as the Director notes, Dir. Resp. Br. at 3, did not address “lungs, throat, mouth, nose, bronchi, [and] sinuses,” we leave the decision to the ALJ to initially determine if they are part of the entire claimed “respiratory condition.”