

## SECTION 15

Section 15(a) prohibits agreements by an employee with employer or carrier to contribute towards an insurance policy or fund, the proceeds from which would provide compensation or medical benefits under the Act.

Section 15(b) provides that any agreement by an employee to waive his right to compensation under the Act is invalid. Section 15(b) is complemented by Section 16, which states that no assignment, release or commutation of compensation shall be valid, except as provided by this Act. Section 8(i) permits the settlement of claims upon approval by the deputy commissioner/district director or administrative law judge.

Thus, the sole exception to Section 15(b) is a settlement agreement approved under Section 8(i) of the Act. Absent an approved settlement under Section 8(i), a claimant may not withdraw a claim in exchange for a sum of money; under the regulation governing withdrawal of a claim, 20 C.F.R. §702.225, the withdrawal must be for a “proper purpose” and receipt of a sum of money in exchange for a withdrawal would violate Section 15(b). *See Gutierrez v. Metrop. Stevedore Co.*, 18 BRBS 62 (1986); *Rodman v. Bethlehem Steel Corp.*, 16 BRBS 123 (1984); *Graham v. Ingalls Shipyard/Litton Sys., Inc.*, 9 BRBS 155 (1978). *See* Section 8(i).

Referring to Section 15(b), the Board rejected the argument that retirement benefits from a fund set up by a contract between employer and claimant’s union and entirely funded by employer should be considered in determining claimant’s loss of earning capacity. The Board rejected the argument that receiving compensation under the Act and retirement benefits amounts to a double recovery, stating that making compensation benefits depend on a contract of which claimant was a third party beneficiary would, in effect, force claimant to waive his right to compensation. *Adkins v. Safeway Stores, Inc.*, 6 BRBS 513 (1977).

Any stipulation constituting an agreement to waive the right to additional compensation under Section 14 of the Act—for example, stipulating that a timely notice of controversion was filed under Section 14(d) when in fact there was no clear indication such notice was filed—is invalid under Section 15(b). *McNeil v. Prolerized New England Co.*, 11 BRBS 576 (1979), *aff’d sub nom. Prolerized New England Co. v. Benefits Review Board*, 637 F.2d 302, 12 BRBS 809 (1<sup>st</sup> Cir. 1980); *Harris v. Marine Terminals Corp.*, 8 BRBS 712 (1978); *Moore v. Newport News Shipbuilding & Dry Dock Co.*, 7 BRBS 1024 (1978).

Section 15(b), however, does not prohibit a voluntary stipulation as to average weekly wage where the average weekly wage stipulated to is based on a reasonable method of computation pursuant to the Act and no inconsistency with the Act has been shown. *Fox v. Melville Shoe Corp., Inc.*, 17 BRBS 71 (1985).

Additionally, Section 15(b) prohibits an employer from conditioning its approval of a third party settlement under Section 33(g) on the claimant's agreeing to waive his right to compensation under the Act. *Rodriguez v. California Stevedore & Ballast Co.*, 16 BRBS 371 (1984).

### Digests

A claim cannot be withdrawn in exchange for a sum of money, since Section 15(b) explicitly provides that an agreement by an employee to waive his right to compensation is invalid. The Board followed *Graham*, 9 BRBS 155, and *Gutierrez*, 18 BRBS 62, holding that an approved settlement was not achieved where claimant sought to terminate his compensation claim for a sum of money but failed to follow the Section 8(i) settlement procedures. Section 8(i) requires approval of an agreement by the deputy commissioner which was refused in this case. Thus, the claim remained pending. *O'Berry v. Jacksonville Shipyards, Inc.*, 21 BRBS 355 (1988), *aff'd in part on recon.*, 22 BRBS 430 (1989).

In holding that an agreed settlement pending approval by the deputy commissioner at the time of claimant's death and approved thereafter was binding on the employer, the Fifth Circuit discussed the statutory framework of Sections 8(i), 15(b) and 16. The court stated that an employer's agreement is binding when entered into, but claimant's agreement to accept compensation is invalid under Section 15(b) unless it is approved because an unapproved settlement is an agreement to waive compensation. Thus, claimant may unilaterally rescind a settlement prior to approval, while employer may not. *See Oceanic Butler Inc. v. Nordahl*, 842 F.2d 773, 21 BRBS 33(CRT) (5th Cir. 1988), *aff'g* 20 BRBS 18 (1987).

A claimant must follow the settlement procedures of Section 8(i) if he wishes to withdraw his claim for a sum of money. The deputy commissioner is authorized to approve a request for a withdrawal of a claim if the request is for a proper purpose and is in claimant's best interest. *See* 20 C.F.R. §702.225. The letter from the deputy commissioner "approving the withdrawal" in this case was not sufficient as it did not contain a determination as to whether the withdrawal was for a proper purpose and in claimant's best interests. Because the payment or promise of payment for a sum of money was involved in the purported withdrawal in this case, the Board held that the withdrawal was ineffective and the claim remained pending adjudication *Norton v. Nat'l Steel & Shipbuilding Co.*, 25 BRBS 79 (1991), *aff'd on recon. en banc*, 27 BRBS 33 (1993)(Brown, J. dissenting).

The Board held that where a settlement agreement as a whole clearly indicated that it applied only to the hearing loss in existence at the time of the settlement, it did not violate Section 15(b). The Board rejected the Director's contention that the language of the settlement was overbroad, noting that claimant had not worked for employer since 1959, that no claim could be filed against employer in the absence of additional injurious exposure, and that a claim for death benefits due to hearing loss was unlikely. Construing

the language of the agreement as only applying to the hearing loss claim for which benefits were sought and as being in compliance with the settlement procedures of Section 8(i), the Board rejected the Director's contention that the settlement violated Section 15(b). *Kelly v. Ingalls Shipbuilding, Inc.*, 27 BRBS 117 (1993).

A claim may not be withdrawn for a sum of money, absent compliance with Section 8(i), as this would violate Section 15(b). In this case there was neither a valid settlement nor valid withdrawal of the claim, and the case was remanded for a determination on the merits. *Henson v. Arcwel Corp.*, 27 BRBS 212 (1993).

Where claimant brought suit in tort against various defendants including employer (which was permissible because employer failed to secure compensation, *see* Section 5(a)), the Fifth Circuit rejected the claimant's breach of contract claim as the contract in question violated Section 15(b). The contract provided that if claimant suffered a compensable injury, employer would pay him 100 percent of his salary and reasonable medical benefits in lieu of the compensation benefits due, and in exchange, claimant waived any claims against employer arising out of his injury. The court found that the contract was void pursuant to Section 15(b) of the Act because it waived claimant's right to compensation under the Act. Although claimant argued that the contract should be enforceable because of employer's failure to secure such compensation, the court held that this issue was separate and distinct from the validity of the contract and that Section 32 of the Act provided a mechanism for punishing employers who failed to secure compensation. The court also rejected claimant's assertion that he was induced by fraud and misrepresentation into entering an agreement which was void. *Brown v. Forest Oil Corp.*, 29 F.3d 966, 28 BRBS 78(CRT) (5th Cir. 1994).

The Board permitted the Director to raise for the first time on appeal the issues of the proper compensation rate and whether a notice of controversy was timely filed even though claimant and employer stipulated to these issues. The stipulations, if not in accordance with law, potentially violate Section 15(b) because they constitute an agreement under which claimant is effectively waiving his right to compensation by accepting less than that to which he is entitled. *Puccetti v. Ceres Gulf*, 24 BRBS 25 (1990).

The Board vacated the administrative law judge's summary approval of the parties' stipulation that claimant has a seven percent permanent leg impairment since there was neither substantial evidence nor a legal foundation for such a stipulation. The Board rejects the contention that the parties can "compromise" via stipulation the degree of permanent impairment. *Bomback v. Marine Terminals Corp.*, 44 BRBS 95 (2010).

The Board vacated the administrative law judge's order which accepted a stipulation that waived claimant's entitlement to interest on past-due benefits. The Board held that, as this case does not involve a Section 8(i) settlement, interest is mandatory and cannot be waived. Permitting such a waiver would violate Sections 15(b) and 16 of the Act. Accordingly, the

Board remanded the case to the administrative law judge to make findings of fact or accept a proper stipulation that reflects claimant's entitlement to interest as appropriate. *Aitmbarek v. L-3 Communications*, 44 BRBS 115 (2010).