

GEOFFREY OLUNGA)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
TRIPLE CANOPY)	DATE ISSUED: 04/19/2012
)	
and)	
)	
INSURANCE COMPANY OF THE STATE)	
OF PENNSYLVANIA)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order Approving Settlement of Jonathan C. Calianos, Administrative Law Judge, United States Department of Labor.

Geoffrey Olunga, Kampala Makindye, Uganda, *pro se*.

Monika F. Markovich (Brown Sims, P.C.), Houston, Texas, for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant, without representation, appeals the Decision and Order Approving Settlement (2010-LDA-0042) of Administrative Law Judge Jonathan C. Calianos rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (the Act). In reviewing an appeal where claimant is not represented by counsel, the Board will review the administrative law judge's findings of fact and conclusions of law in order to determine if they are supported by substantial evidence, are rational, and are in accordance with law; if they are, they must be affirmed. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant was employed with employer as a security guard in Iraq beginning on August 7, 2007. On February 10, 2009, claimant struck his head on a crossbeam in a guard tower at Camp Prosperity, causing him to fall down some stairs and strike the butt stock of his weapon into his breastbone, injuring his chest and ribs. The parties submitted to the administrative law judge an application for a Section 8(i), 33 U.S.C. §908(i), settlement. Under the agreement, claimant was to receive a lump sum payment of \$15,000,¹ and his attorney would receive a fee of \$15,000. Upon stating he reviewed the totality of the record and the criteria in the regulations, 20 C.F.R. §702.243, the administrative law judge approved the settlement, finding that it was adequate and not procured by duress. Decision and Order at 2. Claimant, without representation, appeals the administrative law judge's decision, stating that although he signed the agreement attesting that Dr. Boris Bacic examined him, Dr. Bacic, in fact, did not examine him. Employer responds, urging affirmance of the approval of the settlement agreement.

Section 8(i) provides for the settlement of "any claim for compensation under this chapter" by a procedure in which an application for settlement is submitted for the approval of the district director or administrative law judge. 33 U.S.C. §908(i). The procedures governing settlement agreements are delineated in the Act's implementing regulations. *See* 20 C.F.R. §§702.241-702.243; *see also* *McPherson v. National Steel & Shipbuilding Co.*, 26 BRBS 71 (1992), *aff'g on recon. en banc* 24 BRBS 224 (1991). A settlement agreement shall be approved "unless it is found to be inadequate or procured by duress." 33 U.S.C. §908(i).

Although claimant appeals the administrative law judge's decision, he does not express any dissatisfaction with the terms of the settlement agreement or the amount he received, or suggest that it was procured by fraud or duress. Rather, claimant appears to want only to clarify that Dr. Bacic did not examine him because he believes that, by law, the settlement must be based on the opinion of an examining physician, and he asks the Board's advice regarding his signing an affidavit with an erroneous statement in it. Claimant's concern, however, is unwarranted. Section 702.242, 20 C.F.R. §702.242, requires that the settlement application contain certain information to be considered complete. Although Section 702.242(b)(5) requires "[a] current medical report," there is

¹Of the \$15,000 lump-sum, \$7,000 was apportioned to claimant's past and future compensation benefits and \$8,000 was apportioned for past and future medical benefits.

no requirement that the report be from a physician who personally examined claimant.² 20 C.F.R. §702.242(b)(5). Therefore, although Dr. Bacic did not examine claimant, his opinion constitutes substantial evidence supporting the settlement agreement. The erroneous statement to the contrary in the agreement is harmless. *See generally Bonilla v. Director, OWCP*, 859 F.2d 1484, 21 BRBS 185(CRT) (D.C. Cir. 1988), *amended*, 866 F.2d 451 (D.C. Cir. 1989).

Further, the record supports the administrative law judge's decision to approve the settlement in this case. There is no evidence that claimant was under duress at the time he entered into his agreement or that the settlement was obtained by fraud. Claimant was represented by counsel throughout the settlement process and claimant signed an affidavit agreeing that the settlement agreement was not procured by fraud or duress and that the lump-sum settlement adequately compensated him for any past or future compensation benefits as well as any past or future medical benefits related to his February 10, 2009, work injury. Settlement Agreement at 6-7. Specifically, the parties agreed that claimant has reached maximum medical improvement, has been released to return to work without restrictions, and will need only minimal medical attention. As there is no basis to invalidate the parties' settlement agreement, we affirm the administrative law judge's approval of the Section 8(i) settlement agreement. *See generally Olsen v. General Engineering & Machine Works*, 25 BRBS 169 (1991) (affirming lump-sum settlement).

²Section 702.242(b)(5) requires that a settlement application contain:

A current medical report which fully describes any injury related impairment as well as any unrelated conditions. This report shall indicate whether maximum medical improvement has been reached and whether further disability or medical treatment is anticipated. If the claimant has already reached maximum medical improvement, a medical report prepared at the time the employee's condition stabilized will satisfy the requirement for a current medical report. A medical report need not be submitted with agreements to settle survivor benefits unless the circumstances warrant it.

20 C.F.R. §702.242(b)(5). The record reflects that Dr. Bacic's report comports with these requirements. It appears that Dr. Bacic issued his report based on his review of claimant's medical records relating to the work injury.

Accordingly, the administrative law judge's Decision and Order Approving Settlement is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge