



BRB No. 14-0356

HAROLD LADAY)	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED: <u>Apr. 16, 2015</u>
PACIFIC CRANE MAINTENANCE)	
COMPANY)	
)	
and)	
)	
SIGNAL MUTUAL INDEMNITY)	
ASSOCIATION)	
)	
Employer/Carrier-)	
Respondents)	
)	
ILWU-PMA WELFARE PLAN)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Order Denying Request to Rescind Section 8(i) Agreement of Richard M. Clark, Administrative Law Judge, United States Department of Labor.

Harold Laday, Castro Valley, California, pro se.

Lisa M. Conner and Alisa Manasantivongs (Flynn, Delich & Wise LLP), Long Beach, California, for employer/carrier.

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

PER CURIAM:

Claimant, without representation, appeals the Order Denying Request to Rescind Section 8(i) Agreement (2013-LHC-00143, 2013-LHC-00616, 2012-LHC-00617) of Administrative Law Judge Richard M. Clark rendered on claims filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33

U.S.C. §901 *et seq.* (the Act). In an appeal by a claimant without legal representation, we will review the administrative law judge's decision to determine if the findings of fact and conclusions of law are supported by substantial evidence, rational, and 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 allegedly sustained injuries during the course of his work for employer, for which he filed for benefits under the Act.¹ Employer controverted the claims, which were consolidated when the case was forwarded to the Office of Administrative Law Judges for a formal hearing. While the case was pending before the administrative law judge, claimant, who was represented by counsel, negotiated a settlement with employer, providing for claimant to discharge employer from any and all further liability connected with the claims,² in exchange for the total sum of \$285,000. The parties submitted to the administrative law judge an application for approval of their Section 8(i) settlement, 33 U.S.C. §908(i). The administrative law judge found that claimant, who was represented by counsel, had adequate opportunity to review the proposed agreement, which was reasonable, adequate, and not procured by duress. He thus approved the settlement in a Decision and Order dated March 19, 2013, as amended by Decision and Order dated March 26, 2013.³ Employer tendered payment under the agreement, but claimant returned the uncashed checks, including the lump sum payment.

Claimant was no longer represented by counsel when he filed with the Board, on April 15, 2013, a "petition for reconsideration" of the administrative law judge's

¹Claimant sustained a left shoulder injury on May 2, 2007, and has not returned to work since that incident. Employer voluntarily paid claimant temporary total disability benefits as a result of that left shoulder injury from May 3, 2007 through June 30, 2010, totaling \$126,071.27. Claimant also subsequently alleged he sustained work-related injuries to his right shoulder and his upper and lower extremities, as well as a psychological condition.

²The parties agreed that employer would accept liability only for the left shoulder injury and that all of the other alleged injuries are non-industrial and not related to claimant's work for employer.

³The March 19, 2013 decision, which provided for claimant to receive one lump sum payment of \$250,000, his attorney to receive \$35,000, and an employer payout of \$21,500 to the ILWU-PMA Welfare Plan, was altered to accommodate the parties' subsequent agreement that employer will pay claimant four monthly installments of \$500, with a lump sum payment of \$248,000 to follow on the four-month anniversary of the approval date.

Amended Decision and Order.⁴ The Board construed the pleading as a timely notice of appeal of that decision. In its Order dated September 17, 2013, the Board noted that the “exact nature of claimant’s dissatisfaction with the settlement cannot be discerned.” The Board stated that “it appears [claimant] is unhappy with the payment schedule and desires to have the proceeds paid to him over a longer period of time.” Employer, in response to claimant’s appeal, requested that the case be remanded to the administrative law judge for the issuance of a modified order extending the dates for payment of the settlement proceeds. Noting that “the administrative law judge is in the better position to ascertain the basis for claimant’s dissatisfaction and to rule on any relief to which he may be entitled,” the Board dismissed claimant’s appeal and remanded the case for the administrative law judge “to address claimant’s concerns about the settlement agreement.” *Laday v. Pacific Crane Maint. Co.*, BRB No. 13-0309, slip op. at 2 (Sept. 17, 2013).

In a February 12, 2014 conference call, claimant informed the administrative law judge that he was seeking rescission of the approved Section 8(i) settlement on the grounds that it was inadequate and that the administrative law judge did not have all of the pertinent information before him at the time he approved the settlement agreement. Over employer’s objection, the administrative law judge set the matter for a hearing which was held on March 18, 2014. Following the hearing, the administrative law judge issued an order denying claimant’s motion for rescission and affirming the approval of the Section 8(i) settlement.

On appeal, claimant, without the assistance of counsel, challenges the administrative law judge’s decision not to rescind the Section 8(i) settlement. Employer responds, urging affirmance.

Section 8(i) of the Act, 33 U.S.C. §908(i), provides for the discharge of an employer’s liability for benefits when an application for settlement is approved by the district director or administrative law judge. A settlement agreement must be approved by the fact-finder within 30 days of the submission of the agreement, unless the settlement is inadequate, was procured by duress, or is not in conformance with the regulatory criteria. 20 C.F.R. §§702.241-702.243. Settlements are not subject to the Act’s modification provisions. 33 U.S.C. §922; *Downs v. Director, OWCP*, 803 F.2d 193, 19 BRBS 36(CRT) (5th Cir. 1986); *Diggles v. Bethlehem Steel Corp.*, 32 BRBS 79 (1998); *Rochester v. George Washington University*, 30 BRBS 233 (1997). Similarly,

⁴The parties held conference calls with the administrative law judge on July 11 and 18, 2013. The administrative law judge informed the parties that he did not have jurisdiction to modify the settlement agreement while the appeal was pending before the Board.

settlements cannot be unilaterally rescinded after they have been approved. *Porter v. Kwajalein Services, Inc.*, 31 BRBS 112 (1997), *aff'd on recon.*, 32 BRBS 56 (1998), *aff'd sub nom. Porter v. Director, OWCP*, 176 F.3d 484 (9th Cir.) (table), *cert. denied*, 528 U.S. 1052 (1999); *c.f. Oceanic Butler, Inc. v. Nordahl*, 842 F.2d 773, 21 BRBS 33(CRT) (5th Cir. 1988); *Rogers v. Hawaii Stevedores, Inc.*, 37 BRBS 33 (2003) (settlements are subject to rescission by the claimant until approved). However, the Board has left open the suggestion that a settlement may be re-opened as a matter of equity if a party establishes that the settlement was fraudulently secured. *Downs v. Texas Star Shipping Co., Inc.*, 18 BRBS 37, 39-40 (1986), *aff'd sub nom. Downs v. Director, OWCP*, 803 F.2d 193, 19 BRBS 36(CRT) (5th Cir. 1986).

We affirm the administrative law judge's approval of the parties' settlement agreement, as amended, and his denial of claimant's rescission request.⁵ The settlement agreement submitted by the parties fully complies with the regulation at 20 C.F.R. §702.242.⁶ The administrative law judge properly discussed the adequacy of the sum upon which the parties agreed and determined that the agreement was not entered into under duress. Therefore, the settlement agreement was properly approved by the administrative law judge. *Richardson v. Huntington Ingalls, Inc.*, 48 BRBS 23 (2014).

Additionally, the administrative law judge rationally found that there is no evidence to support claimant's request for rescission. The administrative law judge found that claimant did not offer any new information the administrative law judge had not considered during the approval process.⁷ The administrative law judge found that

⁵Contrary to the administrative law judge's statement that claimant's motion for rescission was not timely filed, we note that claimant timely filed an appeal to the Board after the settlement agreement was approved by the administrative law judge. This is the only method by which a claimant can seek to set aside a settlement after the period for filing a motion for reconsideration with the administrative law judge has expired. *See Losacano v. Electric Boat Corp.*, 48 BRBS 49 (2014); *Porter v. Kwajalein Services, Inc.*, 31 BRBS 112 (1997), *aff'd on recon.*, 32 BRBS 56 (1998), *aff'd sub nom. Porter v. Director, OWCP*, 176 F.3d 484 (9th Cir.) (table), *cert. denied*, 528 U.S. 1052 (1999).

⁶Specifically, the agreement, which includes the requisite information regarding the accident in question and the nature and extent of claimant's work-related injury, states the terms of the settlement, delineates the issues in dispute, documents the supporting medical and vocational evidence, and explicitly provides that claimant agreed to terminate his rights under the Act in exchange for the negotiated amount of the settlement.

⁷The administrative law judge was not persuaded by claimant's position that his learning disability prevented him from adequately understanding the terms of the

claimant, who was then represented by counsel, had ample time to review the agreement, and understood its terms and conditions, including the significance of, and purpose for, the dollar amount offered by employer, at the time he signed it.⁸ See *Richardson*, 48 BRBS 23. Moreover, the administrative law judge again stated, based on the evidence before him, that the settlement amount was adequate and that the agreement was not entered into under duress. Claimant did not allege that the settlement was obtained by fraud and the administrative law judge properly found that claimant's dissatisfaction with the amount of the settlement is not a basis for rescission.⁹ Therefore, as it is rational and

settlement agreement. The administrative law judge found that claimant is "well-spoken [and] well-organized," as evidenced by his demeanor during the rescission hearing, where he "followed the questions and presented his arguments in a cohesive and coherent manner." Order Denying Request for Rescission at 5. Moreover, the administrative law judge noted that claimant, as well as his attorney, was well aware of claimant's learning disability in February 2013, prior to the time that the settlement was executed and subsequently approved. Specifically, the administrative law judge found that, in light of claimant's learning disability, he had explicitly given claimant additional time to review the initial agreement. *Id.* at 4-5.

⁸Claimant was represented by counsel throughout the settlement process and he signed an affidavit agreeing that he understood the meaning and effect of the agreement, that the settlement agreement was not procured by fraud or duress, and that the dollar amount of the settlement adequately compensated him for any past or future compensation benefits as well as any past medical benefits relating to his May 2, 2007 work-related left shoulder injury. Settlement Agreement at 12-17; Order Denying Request for Rescission at 4-5.

⁹Claimant contends that the Social Security Administration's (SSA) determination that he is totally disabled supports his contention that the settlement amount is inadequate. Claimant submitted to the administrative law judge only a notice of hearing regarding his SSA claim. Claimant submitted to the Board the April 25, 2014 SSA determination that he is entitled to permanent total disability benefits. Claimant contends this establishes that employer underpaid him in the amount of \$65,612.41, which, claimant alleges, should now be added to the total amount of the settlement. We reject this contention. The April 25, 2014 SSA determination, post-dates the administrative law judge's decisions in this case. The Board may not consider evidence that was not admitted into evidence by the administrative law judge. *Wynn v. Clevenger Corp.*, 21 BRBS 290 (1988). Moreover, the SSA determination that claimant is permanently totally disabled takes into account all of claimant's disabling conditions. Employer accepted liability only for claimant's left shoulder claim; had the parties not settled, claimant would have had to establish the work-relatedness of his other conditions. In addition, the

in accordance with law, we affirm the administrative law judge's approval of the Section 8(i) settlement agreement and the denial of claimant's motion to rescind that agreement. *Richardson*, 48 BRBS 23; *Porter*, 31 BRBS 112.

Accordingly, the administrative law judge's Order Denying Request to Rescind Section 8(i) Agreement is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

SSA awarded claimant benefits as of September 30, 2011, which does not support claimant's contention that he is entitled to additional benefits from May 2, 2007.