

DENZIE THOMAS)
)
 Claimant-Petitioner)
)
 v.)
)
 RAYTHEON RANGE SYSTEMS) DATE ISSUED: August 13, 2002
)
 and)
)
 LIBERTY MUTUAL INSURANCE)
 COMPANY)
)
 Employer/Carrier-)
 Respondents) DECISION and ORDER

Appeal of the Decision and Order Approving Settlement of Daniel A. Sarno, Jr., Administrative Law Judge, United States Department of Labor.

Denzie H. Thomas, Honolulu, Hawaii, *pro se*.

Kurt A. Gronau, Glenwood Springs, Colorado, for employer/carrier.

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

PER CURIAM:

Claimant, without the aid of counsel, appeals the Decision and Order Approving Settlement (2001-LHC-1073) of Administrative Law Judge Daniel A. Sarno, Jr., 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 an appeal by a claimant without the representation of counsel, 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, are rational, and are in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3). If they are, they must be affirmed.

While working on Kwajalein Atoll for employer on a one-year contract, claimant

sustained a work-related, anterior cruciate ligament (ACL) tear in her left knee on July 6, 1999. On October 21, 1999, Dr. Marumoto performed surgery to repair claimant's torn ACL.

Claimant returned to light-duty work for employer. On May 15, 2000, claimant filed a written claim alleging that she had aggravated her knee injury in a work accident on January 10, 2000. In mid-April 2000, employer did not renew claimant's contract, asserting that its decision was unrelated to claimant's injury.

Claimant's claim for compensation owed for both accidents was scheduled for a formal hearing on July 11, 2001, in Honolulu, Hawaii. On July 5, 2001, employer's counsel in Colorado filed a motion for a continuance with the administrative law judge, stating that claimant, who was then represented by counsel, had not provided employer with claimant's proposed exhibits, witness list or stipulations at least 20 days in advance of the hearing, as required by the administrative law judge's pre-trial order. Counsel averred that because the hearing was scheduled to begin in six days, and he was leaving for Hawaii, insufficient time remained for claimant to provide these documents so that he would have adequate time to prepare for the hearing.

The administrative law judge, on July 10, 2001, cancelled the scheduled hearing at the request of the parties, who informed the administrative law judge that they had reached a settlement agreement. Subsequently, on July 17, 2001, the parties submitted an Application for Agreed Settlement to the administrative law judge, who approved it in a Decision and Order Approving Settlement filed on August 1, 2001. Employer agreed to pay claimant a lump sum of \$10,000, plus an additional \$10,000 over a period of one year (2001-2002) while claimant was undergoing vocational rehabilitation under the auspices of the Department of Labor (DOL). The agreement also provided for an attorney's fee to claimant's counsel, and stated the parties' intent that it was in settlement of claims for medical benefits as well as disability compensation.

Claimant, without the benefit of counsel, appeals the administrative law judge's Decision and Order Approving Settlement. Claimant contends she agreed to the settlement because she would have to wait six months to a year for another hearing to be held. Claimant contends she did not understand that she would not be able to inform the administrative law judge about the work employer provided her after her injury and employer's termination of her employment.¹ Employer responds, urging affirmance.

¹Claimant also filed the same document with the administrative law judge on August 20, 2001, outside the 10-day period for seeking reconsideration, which can render an appeal to the Board premature. *See* 20 C.F.R. §802.206(b)(1), (f). On August 27, 2001, claimant's counsel filed with the administrative law judge a motion to withdraw as claimant's counsel, stating that claimant was attempting, without his knowledge or advice, to unilaterally rescind the settlement for which she had received a payment of \$10,000. He submitted to the

administrative law judge a photocopy of the \$10,000 check from Liberty Mutual to claimant. The administrative law judge treated claimant's filing as a motion that he reject the settlement. The administrative law judge denied the motion on the ground that claimant did not provide any compelling reasons why he should set aside the agreement, particularly in light of claimant's receipt of \$10,000 from employer. As the appeal of the initial decision approving the settlement is properly before the Board, employer's contention that the Board lacks jurisdiction over this appeal, because claimant did not appeal the administrative law judge's second decision, is rejected.

We reject claimant's contentions of error. The settlement agreement signed by claimant fully complies with the regulation at 20 C.F.R. §702.242.² Pursuant to Section 8(i) of the Act, 33 U.S.C. §908(i), a settlement agreement that complies with the regulatory criteria must be approved, unless it is inadequate or procured by duress. An approved settlement acts as a complete discharge of employer's liability under the Act. *See generally Diggles v. Bethlehem Steel Corp.*, 32 BRBS 79 (1998); *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. 1999)(table), *cert. denied*, 120 S.Ct. 593 (1999). Claimant's contention that she signed the settlement agreement because she would otherwise have to wait to have her claim adjudicated does not establish that she was under duress. Rather, it reflects no more than the choice faced by any claimant in deciding whether to proceed with, or to settle, a pending case. Moreover, the fact that claimant did not get to testify before the administrative law judge concerning her post-injury employment and termination does not establish grounds for negating or modifying the settlement. *See generally Rochester v. George Washington University*, 30 BRBS 233 (1997). The settlement agreement states that one of the issues in dispute concerned whether employer provided claimant with suitable alternate employment following her injury, and that claimant was in a DOL-approved vocational rehabilitation program. By agreeing to settle her claim on the advice of counsel, claimant gave up the opportunity to testify before the administrative law judge as to these issues. Finally, the administrative law judge and the Board are without jurisdiction to address claimant's claim of racial discrimination, which she has filed with the Equal Employment Opportunity Commission.

Accordingly, we affirm the administrative law judge's Decision and Order Approving Settlement.

SO ORDERED.

²In the settlement application, the parties state the nature of claimant's injury, the degree of impairment (10 percent), and the medical care rendered to date, including a report from Dr. Scoggins that claimant's condition is stable. The agreement also provides the reasons for the settlement and lists the issues in dispute, discusses claimant's employability, including her current vocational rehabilitation program, the terms of the settlement and the adequacy of the settlement. Lastly, the agreement states that claimant is not in current need of medical care, and that when claimant obtains employment, her new employer will be required to provide her with mandatory medical insurance benefits required by the state of Hawaii. *See* 20 C.F.R. §702.242.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge