



BRB No. 17-0353

ROBERT ROLLO)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
SERVICE EMPLOYEES)	
INTERNATIONAL, INCORPORATED)	
)	
and)	
)	
INSURANCE COMPANY OF THE STATE)	DATE ISSUED: <u>Aug. 31, 2017</u>
OF PENNSYLVANIA c/o CHARTIS)	
WORLDSOURCE)	
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	ORDER

The Director, Office of Workers' Compensation Programs (the Director), has filed a motion to dismiss claimant's appeal of the district director's letter denying claimant's petition to set aside the district director's November 2013 order approving the parties' Section 8(i), 33 U.S.C. §908(i), settlement.

Claimant was injured in 2005 while working in Iraq. Claimant and employer, both represented by counsel, resolved the claim for benefits via a Section 8(i) settlement, and the district director filed his approval order on November 21, 2013. On February 24, 2017, claimant, represented by different counsel, petitioned the district director to set aside the approval of the 2013 settlement, asserting the settlement was inadequate, fraudulent, and procured by duress. In March 2017, the claims examiner denied claimant's request, and in April 2017, the district director reiterated the denial in a letter, informing claimant that the settlement had become final.

Claimant appeals the district director's letter. Employer responds, urging the Board to summarily deny the appeal, and the Director responds with this motion to dismiss. In moving to dismiss claimant's appeal, the Director asserts that the district director's letter is not a final, appealable order, that any appeal of the 2013 approval order is untimely, and that to the extent claimant is permitted to challenge a settlement on equitable grounds, his allegations must first be resolved by an administrative law judge. Neither claimant nor employer has responded to the Director's motion.

Section 802.201(a) of the Board's regulations provides that "[a]ny party or party-in-interest adversely affected or aggrieved *by a decision or order . . .* may appeal *a decision or order* of an administrative law judge or [district director]. . . ." 20 C.F.R. §802.201(a) (emphasis added). In this case, the district director sent a letter dated April 11, 2017, to claimant's counsel denying the petition to reopen the parties' 2013 settlement because the settlement order became final 30 days after the date of filing. This letter is not a "decision" or an "order," and thus is not a final, appealable action. *See generally Craven v. Director, OWCP*, 604 F.3d 902, 44 BRBS 31(CRT) (5th Cir. 2010); *Healy Tibbitts Builders, Inc. v. Cabral*, 201 F.3d 1090, 33 BRBS 209(CRT) (9th Cir.), *cert. denied*, 531 U.S. 956 (2000); *Potter, et al. v. Electric Boat Corp.*, 41 BRBS 69, 72 n.3 (2007); *Maria v. Del Monte/Southern Stevedore*, 22 BRBS 132 (1989) (*en banc*), *vacating on recon.* 21 BRBS 16 (1988); 20 C.F.R. §702.392.¹ Therefore, claimant's appeal must be dismissed.²

¹ Section 702.392 of the regulations provides:

An appeal raising a substantial question of law or fact may be taken from a *decision* with respect to a claim under the Act. Such appeals may be taken from *compensation orders* when they have been filed as provided for in [20 C.F.R. §702.349].

20 C.F.R. §702.392 (emphasis added).

² We express no opinion on claimant's challenges to the settlement agreement. The Director correctly notes that to the extent claimant's allegations involve factual disputes, those disputes must be resolved by an administrative law judge. *See generally Healy Tibbitts Builders, Inc. v. Cabral*, 201 F.3d 1090, 33 BRBS 209(CRT) (9th Cir.), *cert. denied*, 531 U.S. 956 (2000).

Accordingly, we grant the Director's motion to dismiss claimant's appeal.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge