

EUGENIA GARCIA)	
(Widow of Jose Garcia))	
)	
Claimant)	DATE ISSUED:
)	
v.)	
)	
MAHER TERMINALS,)	
INCORPORATED)	
)	
Self-Insured)	
Employer-Respondent)	
)	
and)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT)	
OF LABOR)	
)	
Petitioner)	DECISION and ORDER

Appeal of the Decision and Order Approving Settlement and Order Granting Motion for Reconsideration of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Richard P. Stanton, Jr. (Law Offices of William M. Broderick), New York, New York, for self-insured employer.

Janet R. Dunlop, Counsel for Longshore (Martin Krislov, Deputy Solicitor for National Operations), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BROWN and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director), appeals the Decision and Order Approving Settlement and Order Granting Motion for Reconsideration (97-LHC-1277) of Administrative Law Judge Paul H. Teitler 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.* (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge if they are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Decedent suffered a work-related injury on March 5, 1987, and was found to be permanently totally disabled as of that date. Decedent died on October 22, 1996. His widow, claimant herein, thereafter filed a claim for death benefits pursuant to Section 9 of the Act, 33 U.S.C. §909. Employer controverted the claim, and the case was transferred to the Office of Administrative Law Judges. Thereafter, employer and claimant entered into stipulations in which employer agreed to pay through the Special Fund, and claimant agreed to accept, \$550 per week retroactive to the date of her husband's death and continuing throughout her lifetime. Employer further agreed to reimburse claimant \$3,000 for funeral expenses and pay claimant's attorney a fee of \$7,500.

Employer and claimant, through counsel, subsequently requested the issuance of a formal order incorporating the terms of their stipulation. On October 8, 1997, the administrative law judge issued a Decision and Order Approving Settlement, in which he stated that he had considered the facts involved in the case and the legal and factual questions in dispute, as well as the criteria set forth in 20 C.F.R. §702.243(f), and concluded that the settlement is fair, in the best interest of claimant and was concluded without duress. After the issuance of the administrative law judge's decision, the Director filed a motion for reconsideration, asserting that employer cannot unilaterally bind the Special Fund to any agreement regarding the amount of compensation benefits. The Director further contended that the settlement agreement was not a valid Section 8(i) settlement pursuant to 20 C.F.R. §702.242. In his Order Granting Motion for Reconsideration, the administrative law judge agreed with the Director that claimant was entitled to weekly benefits of \$649.29, *i.e.*, half of decedent's average weekly wage, as of October 22, 1996, the date of decedent's death, and directed employer to pay the difference of \$109.29 from October 22, 1996. In an Errata dated December 5, 1997, the administrative law judge amended his earlier order and stated that payments at the rate of \$550 per week shall begin as of the date of decedent's death and that said payments are to

be made by the Special Fund for the widow' s lifetime.

On appeal, the Director contends that the administrative law judge erred in approving the parties' stipulations as a settlement pursuant to Section 8(i) of the Act when the stipulations did not comply with the requirements set forth in 20 C.F.R. §702.242 for a complete Section 8(i) settlement application; additionally, the Director asserts that a settlement requiring payments by the Special Fund, without the participation of the Director, is prohibited by Section 8(i)(4) of the Act. Employer responds, agreeing with the Director that the administrative law judge's Decision and Order approving the settlement should be reversed to the extent that the amount set forth in the settlement should be payable only during claimant's widowhood, rather than her lifetime, consistent with the provisions of Section 9(b), 33 U.S.C. §909(b), regarding remarriage. In all other respects, employer urges affirmance of the administrative law judge's decision. Claimant has not participated in this appeal.

The Director contends that the settlement agreement is invalid, as it provides for payment by the Special Fund without the participation of the Director in violation of Section 8(i)(4) of the Act, 33 U.S.C. §908(i)(4), and Section 702.242(a) of the regulations, 20 C.F.R. §702.242(a). We agree. Section 8(i) of the Act, as amended in 1984, 33 U.S.C. §908(i)(1994), provides for the settlement of claims for compensation by a procedure in which an application for settlement is submitted for the approval of the district director or administrative law judge. Claimants are thus not permitted to waive their right to compensation except through settlements approved under Section 8(i). See 33 U.S.C. §§915, 916; *Henry v. Coordinated Caribbean Transport*, 32 BRBS 29, 31 (1988); see also *Henson v. Arcwel Corp.*, 27 BRBS 212 (1993). Section 8(i)(4) of the Act states:

The special fund shall not be liable for reimbursement of any sums paid or payable to an employee or any beneficiary under such settlement, or otherwise voluntarily paid prior to such settlement by the employer or carrier, or both.

33 U.S.C. §908(i)(4)(1988). Section 702.242(a) states that an application for settlement should be in the form of a stipulation signed by all parties. 20 C.F.R. §702.242(a).

The Board has previously determined that a settlement agreement between an employer and a claimant which affects the liability of the Special Fund is not binding on the Fund absent the participation of the Director. See *Dickinson v. Alabama Dry Dock & Shipbuilding Corp.*, 28 BRBS 84 (1993). See also *Brady v. J. Young and Co.*, 17 BRBS 46 (1985), *aff'd on recon.*, 18 BRBS 167 (1985); *Younger*

v. Washington Metropolitan Area Transit Authority, 16 BRBS 360 (1984). Moreover, Section 8(i)(4) was enacted in order to prevent employers from seeking relief from the Special Fund after reaching a settlement with a claimant in a case that otherwise would be assigned to the Fund. See H.R. CONF. REP. No. 1027, 98th Cong., 2d Sess. 28, *reprinted in* 1984 U.S.C.C.A.N. 2783-2787.

In the instant case, the settlement agreement affects the Special Fund by requiring it to pay weekly benefits to claimant. We agree with the Director that, because he did not participate in the settlement negotiations between claimant and employer and neither he nor his representative signed the settlement agreement, that portion of the agreement pertaining to Section 8(f) relief is invalid. Moreover, we agree with the Director that the settlement application does not comply with the regulations set forth in 20 C.F.R. §702.241-243.¹ The settlement application must be a self-sufficient document which can be evaluated without further reference to the administrative file. 20 C.F.R. §702.242(a). Accordingly, as the Director neither participated nor signed the settlement herein, and as the stipulations set forth by the parties do not meet the regulatory criteria set forth in Section 702.242 of the regulations, we hold that a proper settlement has not been accomplished pursuant to Section 8(i). We therefore vacate the administrative law judge's approval of the settlement, and we remand the case to the administrative law judge for a determination on the merits.

Accordingly, the Decision and Order Approving Settlement and the Order Granting Motion for Reconsideration are vacated, and the case is remanded to the administrative law judge for consideration of the merits of the case. On remand, a new settlement may be reached with the approval of the Director and compliance with the regulations, as set forth in 20 C.F.R. §§702.241-243.

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

¹The settlement application appears to be inadequate in that it does not include an itemized description of the representative's fee, the issues which are in dispute, the claimant's date of birth, date of death, the names and birth dates of all dependents, and a statement explaining how the settlement is considered adequate. In addition, the stipulations do not contain a summary of the facts including a description of the accident, a description of the medical care rendered to date of settlement, and a summary of compensation paid or where benefits have not been paid, and the decedent's average weekly wage. 20 C.F.R. §702.242.

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge