

BRB No. 12-0280

LEONARD E. VINES)
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)
Claimant-Petitioner)
)
v.)
)
WASHINGTON METROPOLITAN) DATE ISSUED: 01/25/2013
AREA TRANSIT AUTHORITY)
)
Self-Insured)
Employer-Respondent) DECISION and ORDER

Appeal of the Decision and Order Granting Motion for Summary Decision and Dismissing the Claims of Daniel A. Sarno, Jr., Administrative Law Judge, United States Department of Labor.

Leonard E. Vines, Durham, North Carolina, *pro se*.

Sarah O. Rollman (Washington Metropolitan Area Transit Authority), Washington, D.C., for self-insured employer.

Before: SMITH, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant, without representation by counsel, appeals the Decision and Order Granting Motion for Summary Decision and Dismissing the Claims (2011-DCW-00002 – 2011-DCW-00007) 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.* (1982), as extended by the District of Columbia Workmen's Compensation Act, 36 D.C. Code §501 *et seq.* (1973) (the Act). In an appeal by a *pro se* claimant, 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. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). If they are, they must be affirmed.

Claimant worked for employer as a bus driver from May 1974 until March 1978. During that time, he filed seven claims for various injuries to his head, finger, neck, back, shoulder, wrist, and knee.¹ In 1979, while he was working for another employer, claimant and employer filed an application for a Section 8(i), 33 U.S.C. §908(i) (1982), settlement, for a lump sum of \$43,500 in compensation for all seven claims but leaving medical benefits open. The district director² issued a compensation order on February 26, 1979, approving the settlement. In 1980, claimant got a job as a security guard, and, in 1981, he began training as a mechanic in North Carolina. Five days before graduation, on August 6, 1982, he injured his back, shoulder, and head when an air hose exploded, and he has not worked since that date. On May 16, 1984, claimant's application for Social Security benefits for injuries caused by his 1982 accident was approved.

In a letter dated October 15, 2010, claimant, without counsel, contacted the Office of Workers' Compensation Programs, seeking an informal conference because he believed his claims under the Act had not been properly settled. In March 2011, he reiterated his request for an informal conference to reopen his claims because he believed the settlement did not cover all his injuries and alleging he was incompetent at the time of the settlement and did not/could not authorize it. Claimant sought continuing compensation benefits and interest from 1979. He requested a formal hearing, and the case was transferred to the administrative law judge. Employer filed a Motion for Summary Decision on the ground that the 1979 settlement was approved, was not appealed, and became final. Moreover, employer asserted that claimant has not put forth any evidence to support his allegations of the existence of a genuine issue of fact.

The administrative law judge granted employer's motion. He found that: 1) both parties were represented by attorneys when the settlement was drawn up and executed; 2) both attorneys and claimant signed the settlement application; and, 3) the district director approved the settlement. The administrative law judge also found there is nothing in the record to support claimant's allegations that no settlement was ever agreed upon, that he did not authorize the settlement, or that he was incompetent and could not enter into such agreement. As the settlement was final, the administrative law judge found there is no issue of fact to be resolved, and he dismissed the case. Decision and Order at 5-6. Claimant, without counsel, appeals the administrative law judge's Decision and Order, making numerous challenges to the validity of the settlement, and employer responds, urging affirmance. For the reasons below, we affirm the administrative law judge's Decision and Order.

¹The injuries occurred on: May 25, 1975, October 10, 1975, November 22, 1975, March 29, 1976, August 7, 1976, July 3, 1977, and November 18, 1977.

²Pursuant to 20 C.F.R. §702.105, the term "district director" has replaced the term "deputy commissioner" used in the statute.

Claimant first avers he was incompetent at the time of the settlement agreement and, therefore, was unable to authorize it. Claimant has put forth no evidence that supports his assertion. He submitted medical reports from several psychiatric and psychological evaluations; however, none of them establishes he had a mental incapacity, such that he would have been unable to enter into a contract or understand the terms thereof, at the time of this settlement. The three reports dated prior to the Section 8(i) agreement, written in 1976 and 1978, addressed only claimant's marital issues, and the psychiatrist diagnosed him with marital maladjustment and an immature personality but "no formal thinking disorder." The remaining psychological evaluations, dated subsequent to claimant's 1982 accident, related any psychological problems claimant may have had to that incident.

Claimant has not demonstrated that he had a psychological disorder or was incompetent at the time of the 1979 settlement. There are no psychological or psychiatric evaluations diagnosing claimant with a mental incapacity at that time. Further, any psychological problem claimant may have had in the early 1980s was, by his own admission to the doctors, related to the 1982 accident; thus, any such condition would not have prevented his understanding the terms of a settlement executed in 1979. Therefore, we reject claimant's assertion that he was incompetent at the time of the 1979 settlement, as there is no evidence to support such a claim. *See generally Director, OWCP v. Greenwich Collieries*, 512 U.S. 167, 28 BRBS 43(CRT) (1994); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996); *see also Borne v. A & P Boat Rentals No. 4, Inc.*, 780 F.2d 1254 (5th Cir. 1986) (no evidence of Jones Act seaman being incompetent at time of settlement).

Claimant next contends the 1979 settlement did not discharge employer from liability for all his injuries because one of the numbers identified for one of the seven claims was not correct. Therefore, he argues, he was not compensated for all his injuries and is entitled to additional benefits.³ Contrary to claimant's assertion regarding the claim numbers, the claims examiner addressed this issue. In an October 28, 2010,

³Claimant also seems to contend that he is entitled to a 20 percent permanent partial disability award "for life" because his "20 percent" injury was not included in the settlement. Claimant is mistaken. In 1977, employer and claimant entered into a stipulation covering three injuries (May 25, 1975, March 29, 1976, and August 7, 1976) and indicating that claimant sustained a 20 percent permanent partial disability due to those injuries. Exh. 19. There also is a Notice of Payment of Compensation Without Award form indicative of employer's liability for benefits for a 20 percent impairment, to be paid based on claimant's average weekly wage as of his August 7, 1976, injury. However, these injuries were subsequently incorporated into the Section 8(i) settlement agreement and, thus, any continuing liability under the stipulation was discharged. Exhs. 4, 19.

memorandum to the file, she noted that she informed claimant that one of the numbers on the Order approving the settlement merely contained a typographical error.⁴ She stated that claimant appeared to understand her explanation.⁵ As all seven injuries were included in the settlement agreement and in the district director's approval order, we reject the assertion that the 1979 settlement did not fully discharge employer's liability to claimant for disability compensation. *See generally Kelly v. Ingalls Shipbuilding, Inc.*, 27 BRBS 117 (1993); *Almeida v. General Dynamics Corp.*, 12 BRBS 901 (1980).

Claimant also asserts he did not sign the settlement application or authorize this settlement. The record establishes that claimant and employer were represented by counsel at the time the agreement was entered into. The record also reveals a very detailed settlement application which explained not only the dates of claimant's injuries, but the amounts employer had already paid, the fact that claimant was not under medical care at the time of the settlement, the risk of non-success of proceeding to a hearing, and the fact that claimant was working for another employer at the time. The settlement application also stated that the parties agreed it was in claimant's best interests to settle his claims, that medical benefits were not foreclosed, and that claimant was advised of his rights and what the settlement meant. Exh. 4. The settlement appears to have been signed by claimant and both attorneys. Other than his bare allegations, claimant has put forth no evidence to show that the signature on the settlement agreement is not his. Indeed, the signature on the settlement application appears to match his signature on the 1977 stipulation agreement. Moreover, the statements in the settlement, which established that claimant was advised of his rights, and that settlement was in his best interest, detract from his contention that he did not authorize this settlement. As claimant was represented by counsel and his interests were protected, we reject this challenge to the settlement.

Claimant also contends that the district director sent the Order approving the settlement to an incorrect address, and that the certified mail receipt contains his forged signature. Claimant does not assert, however, that he never received a copy of the Order. His evidence of circling the allegedly incorrect address and pointing to his name on a February 26, 1979, "receipt for certified mail," which is the district director's receipt for having sent the certified mail and not claimant's signature of having received the certified mail, does not establish error with the district director's approval of the settlement

⁴The settlement application inadvertently carried the number 106779 instead of 106799, and this was carried over to the Order approving the settlement.

⁵Nonetheless, claimant filed a complaint against his attorney for not protecting his interests. The District of Columbia Bar found no evidence to support an investigation. Exh. 19.

agreement in this case. Thus, claimant has shown nothing that would invalidate the 1979 Section 8(i) settlement with employer.

Finally, the 1972 Act provided that whenever the district director determined that a settlement was in the best interests of the claimant, he may approve the settlement. 33 U.S.C. §908(i) (1982). As the district director filed an Order specifically approving the settlement here, the parties had 30 days within which to file an appeal of the Order. 33 U.S.C. §921(a), (b) (1982); 20 C.F.R. §802.205(a). No party appealed the Order approving the settlement within the allotted time frame. Thus, the settlement became final. *Id.; 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. 1184 (1999); *Rochester v. George Washington University*, 30 BRBS 233 (1997).

The administrative law judge found that claimant did not raise a genuine issue of material fact with regard to the settlement because, as discussed, there is no evidence to support claimant's allegations. Thus, the first prong for summary decision has been met. *See, e.g., R.V. [Villaverde] v. J. D'Annunzio & Sons*, 42 BRBS 63 (2008), *aff'd mem. sub nom. Villaverde v. Director, OWCP*, 335 F.App'x 79 (2^d Cir. 2009); *Hall v. Newport News Shipbuilding & Dry Dock Co.*, 24 BRBS 1 (1990). Moreover, a properly approved Section 8(i) settlement is not subject to modification under Section 22 of the Act, 33 U.S.C. §922. *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); *Downs v. Texas Star Shipping Co., Inc.*, 18 BRBS 37, *aff'd sub nom. Downs v. Director, OWCP*, 803 F.2d 193, 19 BRBS 36(CRT) (5th Cir. 1986). The settlement in this case became final 30 days after the district director approved it, and, as it is not subject to modification, employer is entitled to summary decision as a matter of law. Therefore, we affirm the administrative law judge's Decision and Order granting employer's motion for summary decision and dismissing the claim. *See Villaverde*, 42 BRBS 63.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge