

REBECCA DICKEY)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
TODD SHIPYARDS CORPORATION)	DATE ISSUED:
)	
and)	
)	
AETNA CASUALTY & SURETY)	
COMPANY)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order of R. S. Heyer, Administrative Law Judge, United States Department of Labor.

William I. Richman (Goldwater and Richman), Wilmington, California, for claimant.

Daniel F. Valenzuela (Samuelson, Coalwell & Gonzalez), San Pedro, California, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (84-LHC-1783) of Administrative Law Judge R. S. Heyer denying claimant's request for modification of an approved settlement of his claim pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act).¹ We must affirm the findings of fact and conclusions of law of the

¹We note that the district director's inability to locate the record from the proceedings below has delayed the review of this appeal. *See* Board Order dated August 22, 1988. By Order dated October 29, 1990, the Board directed the parties to forward copies of the exhibits and the transcript of the hearing before Administrative Law Judge Heyer. Inasmuch as the parties have responded that no exhibits were submitted and no hearing transcript was obtained, the Board will consider claimant's appeal on the basis of the pleadings filed by the parties with the Board.

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).

Claimant sustained a work-related injury on April 16, 1980, for which she filed a claim for compensation under the Act. On December 5, 1982, the district director² approved a settlement for disability compensation in the amount of \$22,500 pursuant to Section 8(i)(A) of the Act, 33 U.S.C. §908(i)(A) (amended 1984). On December 1, 1983, claimant attempted to invoke the provisions of Section 22 of the Act, 33 U.S.C. §922 (amended 1984), to modify the approved settlement on the ground of a change in condition. Subsequent to an informal conference held on January 17, 1984, the district director transferred the case to the Office of Administrative Law Judges for a hearing on claimant's modification request. Thereafter, the administrative law judge granted employer's Motion to Dismiss, ruling that claimant's pending request for modification was barred under the Longshore and Harbor Workers' Compensation Act Amendments of 1984, Pub. L. 98-426 §16(3), 98 Stat. 1639, 1650, which specifically prohibit modification of Section 8(i) settlements.

On appeal, claimant contends that, because at the time her petition for modification was filed in 1983 the Act did not expressly prohibit modification of Section 8(i) settlements, the administrative law judge's retroactive application of the 1984 Amendments to the Act resulted in a denial of her right to due process. Employer responds, urging affirmance.

At the time the parties entered into the settlement, Section 8(i)(A) of the Act, 33 U.S.C. §908(i)(A) (1972), provided that the district director may approve agreed settlements of the parties, discharging the liability of the employer, if it was in the best interest of the injured employee.³ Section 22 of the Act authorizes the district director or administrative law judge to review a compensation case and determine whether modification of a compensation award is appropriate. The 1984 Amendments add to Section 22 the proviso, "[t]his Section does not authorize the modification of settlements." See 1984 Amendments, 98 Stat. at 1650, §16(3); 33 U.S.C. §922 (1988).

This provision is consistent with the interpretations of Sections 8(i) and 22 adopted under the pre-1984 Act, as the Board has held that modification of a settlement is not available in cases adjudicated under the Act prior to the 1984 Amendments. See *Lambert v. Atlantic & Gulf Stevedores*, 17 BRBS 68 (1985). In *Lambert*, the Board, noting that the language of pre-1984 Section 8(i) and its legislative history indicate an intent to provide a vehicle for the final and complete discharge of an employer's liability, determined that, pursuant to the pre-1984 Act, a

²We note that the title "district director" has been substituted for the title "deputy commissioner" used in the statute. 20 C.F.R. §702.105.

³We note that, although Section 8(i) was substantially amended by the Longshore and Harbor Workers' Compensation Act Amendments of 1984, Pub. L. 98-426, 98 Stat. 1639, 1650, those amendments are not in issue in the instant case as the settlement was approved in 1982 and no issues arising from that approval are pending. See *Lambert v. Atlantic & Gulf Stevedores*, 17 BRBS 68, 69 n.1 (1985).

Section 8(i) settlement provides for the complete discharge of the liability of the employer for payment of compensation and is not subject to modification pursuant to Section 22. *See* 17 BRBS at 70; *see also 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. Director, OWCP*, 803 F.2d 193, 19 BRBS 36 (CRT)(5th Cir. 1986), *aff'g sub nom. Downs v. Texas Star Shipping Co., Inc.*, 18 BRBS 37 (1986).

In the instant case, claimant's argument that retroactive application of the 1984 Amendments results in denial of due process is without merit, as adjudication of claimant's request for modification of her approved Section 8(i) settlement under the pre-amendment Act leads to the same result as that reached by the administrative law judge. Under either the pre- or post-1984 Amendment Act, the modification of settlements is precluded. *See Lambert*, 17 BRBS at 68; 33 U.S.C. §922. We therefore affirm the administrative law judge's finding that claimant is precluded from seeking modification of her approved Section 8(i) settlement pursuant to Section 22 of the Act.

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

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge