

BRB Nos. 91-676
and 91-676A

RUBY L. COMEAUX)	
)	
Claimant)	
Cross-Petitioner)	
)	
v.)	
)	
ARMY AND AIR FORCE EXCHANGE)	
)	
Self-Insured)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED:
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT)	
OF LABOR)	
)	
Respondent)	
Cross-Respondent)	DECISION and ORDER

Appeals of the December 10, 1990, letter of Marilyn Felkner, District Director, United States Department of Labor.

Steve Backhaus (Backhaus and Backhaus), Wichita Falls, Texas, for claimant.

Yancey White and Paul Dodson (White, Huseman, Pletcher & Powers), Corpus Christi, Texas, for employer/carrier.

Joshua T. Gillelan II (Thomas S. Williamson, Jr., Solicitor of Labor; Carol DeDeo, Associate Solicitor; Janet Dunlop, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant and employer appeal the December 10, 1990 letter (08-78741 and 08-86884) of District Director¹ Marilyn Felkner denying their application for approval of a settlement of 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).² The district director's decision must be affirmed unless it is arbitrary, capricious, an abuse of discretion or not in accordance with law. *Sans v. Todd Shipyards Corp.*, 19 BRBS 24 (1986); 33 U.S.C. §921(b)(3); 20 C.F.R. §§802.211(e), 802.220.

Claimant sought compensation under the Act for an alleged 1984 work-related back injury and a 1986 work-related fall. On October 16, 1990, claimant and employer entered into a proposed settlement agreement whereby the parties stipulated that, while working for employer, claimant suffered a low back strain on March 21, 1984, a possible stroke or heart attack on August 22, 1986, and a fall on October 22, 1986, which resulted in post-traumatic brain syndrome. Pursuant to the proposed settlement, which was submitted for approval on October 30, 1990, employer agreed to pay claimant a lump sum of \$25,000, \$5,000 in an attorney's fee, approximately \$4,000 for outstanding medical bills, and unspecified medical benefits for one year only.

In a letter dated November 14, 1990, the claims examiner advised the parties that their application for approval was denied, stating that claimant was entitled to permanent partial disability for a 1984 back injury and that there was no evidence to rebut a causal connection between claimant's brain syndrome and her 1986 fall at work; as a result, the claims examiner concluded that the settlement amount was inadequate. The letter further stated that the case would be referred to the Office of Administrative Law Judges 21 days from the date of the letter. Employer nevertheless paid claimant the proposed settlement amount, and informed the district director of its action in a Form LS-208 dated December 4, 1990.

In a letter dated December 10, 1990, the district director reiterated that the proposed settlement was disapproved and that claimant's right to compensation and medical benefits remained open. The district director stated that since employer received the claims examiner's November 14, 1990, letter, employer was directed to send to her office a letter of explanation for its subsequent actions.³ In a letter dated December 20, 1990, employer responded, stating the claims examiner did

¹The title "district director" has been substituted for the title "deputy commissioner" used in the statute. 20 C.F.R. §702.105.

²The parties agree that the December 10, 1990 letter is a decision raising a substantial question of law subject to the Board's review under 33 U.S.C. §921(b)(3).

³In her December letter, the district director further recommended that claimant be paid temporary total disability benefits from August 23, 1986 and continuing at a weekly rate of \$148.81, until it is established that claimant is no longer entitled to benefits or the permanency of claimant's condition is established. The district director additionally stated that, in view of employer's lump sum payment of \$25,000, to claimant, it is entitled to a credit for temporary total disability benefits from August

not have authority to deny the proposed settlement, that employer believed that the settlement had been automatically "deemed approved" under Section 8(i), 33 U.S.C. §908(i), and that unless the district director demonstrated by case law that employer was incorrect, it would abide by the settlement agreement. EX 5. The district director did not respond and, in January 1991, employer appealed, and claimant cross-appealed, her denial of the proposed settlement to the Board.⁴

Thereafter, on February 13, 1991, the district director wrote to employer reaffirming the denial of the proposed settlement. The district director stated that she had reviewed the parties' proposed settlement and found it to be inadequate, and therefore directed the claims examiner to issue the denial letter according to her instructions. Additionally, the district director stated that the proposed settlement contained language which would have precluded approval of the settlement. Specifically, the district director noted that Section 10 of the stipulation stating that "the costs of future medical expenses will be minimal" was contrary to the evidence which showed that claimant's future medical expenses for her chronic lumbar disc disease and organic brain syndrome are likely to be quite substantial; Section 17, which provides that employer will not be liable for aggravations or exacerbations of claimant's prior injuries, was an improper attempt to settle claims not yet in existence; Section 13, in which employer sought to waive its right to recover any and all overpayments and advances is dubious, and therefore should not be used as consideration by the employer for entering into the settlement which is otherwise inadequate; and, lastly, that Section 16, stating that the proposed settlement is automatically "null and void" at the moment of the employee's death, is invalid. Consequently, the district director advised employer to resubmit a proper settlement application. EX 6.⁵

On appeal, employer and claimant challenge the denial of their proposed settlement agreement. Specifically, the parties contend that the claims examiner did not have the authority to deny the proposed settlement, and that the settlement was "deemed approved" 30 days after its submission. The Director, Office of Workers' Compensation Programs, responds, contending, *inter alia*, that the employer was properly notified that the settlement was denied within 30 days of its submission and, in any event, the parties' incomplete settlement agreement tolled the 30-day automatic approval period under 20 C.F.R. §702.243(a).

23, 1986 through November 10, 1989, and should commence payment of claimant's benefits on November 11, 1989.

⁴Claimant's appeal, although labelled a cross-appeal, is in actuality an appeal in support of employer's appeal. Subsequently, claimant and employer submitted a joint brief.

⁵On March 1991, the parties requested that the case be presented for oral argument. In an Order dated November 29, 1991, the Board indicated that the case would be scheduled for oral argument. Upon further reflection, however, we have determined that an oral argument is not necessary for disposition of the case.

Section 8(i) as amended in 1984 requires approval of a settlement between the parties "unless [the agreement] is found to be inadequate or procured by duress." 33 U.S.C. §908(i)(1)(1988). When the parties are represented by counsel, the amended subsection further provides that the agreement is "deemed approved" at the end of 30 days from submission of the agreement "unless specifically disapproved" within that time. Section 702.243(a), 20 C.F.R. §702.243(a), of the regulations provides that the failure to file a complete settlement application which complies with 20 C.F.R. §702.242(b) will toll the 30-day automatic approval period until a complete application is submitted. Section 702.242(b) sets forth eight specific requirements for a complete application, including: a statement explaining how the settlement amount is considered adequate, a current medical report which fully describes any injury-related impairment as well as any unrelated conditions, and the reason for the settlement and issues which are in dispute. *See* 20 C.F.R. §702.242(b).

We agree with the Director that the settlement agreement as submitted in the case at bar did not satisfy the applicable regulations. Specifically, the proposed settlement does not set forth the reason for the settlement, *see* 20 C.F.R. §702.242(b)(2), does not provide the requisite medical reports for claimant's alleged multiple injuries, *see* 20 C.F.R. §702.242(b)(5), and does not state how the settlement is considered adequate, *see* 20 C.F.R. §702.242(b)(6). *See* EX 1. Given the inadequate nature of the proposed settlement application, we need not address the parties' contentions regarding the claims examiner's authority to deny their proposed settlement agreement.⁶

The Board has held that a settlement application which does not comply with the requirements of Section 702.242(a) and (b) tolls the 30-day automatic approval period as a matter of law. *See McPherson v. National Steel & Shipbuilding Co.*, 24 BRBS 224 (1991), *aff'd on recon. en banc*, 26 BRBS 71 (1992). Therefore, the 30-day period commences when a complete application is submitted. 20 C.F.R. §702.243. In the instant case, the deficiencies in the proposed settlement application rendered the settlement agreement incomplete as a matter of law and served to toll the 30-day automatic approval period under 20 C.F.R. §702.243(a). *Id.* Thus, because the settlement application as submitted is incomplete as a matter of law, we reject the parties' contentions on appeal, and we hold that the application was not "deemed approved" within 30 days of its submission. The district director, therefore, committed no error when, on December 10, 1990, she formally declined to approve the proposed settlement agreement. *See Norton v. National Steel & Shipbuilding Co.*, 25 BRBS 79 (1991), *aff'd on recon. en banc*, 27 BRBS 33 (1993)(Brown, J. dissenting).

⁶We note that the Director agrees that a claims examiner lacks authority to approve or disapprove a settlement. As the Director contends, however, in this case employer was clearly notified of the disapproval of the settlement within the 30-day period. The Director asserts that employer was aware that the district director had reviewed the settlement and that the letter confirmed her decision. Nevertheless, once employer received the letter signed by the claims examiner, the Director notes that employer voiced no objection, though it had several forums for challenging the decision; rather, it waited out the 30 days, paid the money due under the agreement and notified the district director's office by filing a form without explanation. Thus, were we to address the authority issue presented, it would have to be reviewed in the context of these actions.

Where, as in the instant case, a settlement application is disapproved by the district director, any party to the settlement may request a hearing before an administrative law judge or submit an amended application to the district director. 20 C.F.R. §702.243(c). We therefore remand the case to the district director to allow the parties to either amend the deficient settlement application to comply with the applicable regulation or to request a hearing on the merits of the claim.

Accordingly, the district director's denial of the parties' settlement application is affirmed, and the case is remanded to the district director to allow the parties either to amend the deficient settlement application to comply with the applicable regulations or to proceed with a hearing on the merits of the claim.

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge