

JOHN T. WILLIAMS)	
)	
Claimant)	
)	
v.)	
)	
ALABAMA DRY DOCK AND)	DATE ISSUED:
SHIPBUILDING CORPORATION)	
)	
Self-Insured)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT)	
OF LABOR)	
)	
Petitioner)	DECISION and ORDER

Appeal of the Decision and Order of Richard D. Mills, Administrative Law Judge, United States Department of Labor.

Winn S. L. Faulk, Mobile, Alabama, for employer.

Michael S. Hertzog (J. Davitt McAteer, Acting Solicitor of Labor; Carol A. 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: SMITH, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director), appeals the Decision and Order Approving Settlement (89-LHC-3346) of Administrative Law Judge Richard D. Mills 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 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).

Claimant sought benefits under the Act for a work-related binaural hearing impairment. At the hearing before the administrative law judge held on June 11, 1990, the parties indicated that they would be submitting a proposed settlement agreement for approval. On June 21, 1990, the parties submitted the proposed agreement in which employer agreed to pay claimant a lump sum of \$5,500 in full settlement of any claims for compensation arising out of, or in any way connected with, any hearing impairment sustained by claimant during his employment with employer.¹ The agreement also provided that employer was to continue to provide medical treatment in accordance with Section 7 of the Act, 33 U.S.C. §907, and to pay claimant's counsel an attorney's fee of \$2,045. Moreover, employer agreed to waive its right to Special Fund relief pursuant to 33 U.S.C. §908(f). In a Decision and Order dated July 24, 1990, the administrative law judge, incorporating the terms of the parties' settlement, ordered employer to pay claimant \$5,500, without interest in full settlement of claimant's compensation claim, continuing medical benefits, and an attorney's fee of \$2,045.

On appeal, the Director contends that the administrative law judge's Decision and Order approving the settlement agreement should be set aside and the case remanded, because it contains no real assessment of the adequacy of the settlement and whether it was procured by duress and thus fails to comply with Section 8(i) of the Act, 33 U.S.C. §908(i), and the regulations at 20 C.F.R. §§702.241-243. In addition, the Director argues that the administrative law judge's approval of the settlement should be set aside because it contains language which violates Section 8(i) of the Act and Section 702.241(g) of the regulations because it discharges employer from potential liability for claims not yet in existence. Employer responds, urging affirmance. Claimant has not responded to this appeal.

Section 8(i) of the Act permits the parties in a disputed claim to compromise and settle their dispute, provided the employer and/or carrier therein are fully discharged of liability, and the administrative law judge approves the agreement. 33 U.S.C. §908(i)(1), (3)(1988). Sections 702.241-243 of the regulations apply to settlements made under Section 8(i). 20 C.F.R. §§702.241-702.243. Section 702.242 specifically identifies the information necessary for a complete settlement application.

We reject the Director's argument that the administrative law judge's approval of the settlement should be set aside. Although the Director asserts that the administrative law judge failed to assess the adequacy of the settlement and whether it was procured by duress, we disagree. The administrative law judge incorporated the parties' settlement agreement by reference into his Decision and Order approving the settlement. In that agreement, the parties specifically indicated that the settlement amount was adequate to meet claimant's present and future financial needs. In the agreement, claimant also attested that the settlement had not been procured by duress, and that he had entered into the agreement knowingly, voluntarily, and with the advice and consent of counsel. Because the settlement provided claimant, who was represented by counsel, with compensation for a

¹The parties also stipulated that claimant had a 23.3 percent binaural hearing impairment at the time of his retirement in 1980.

23.3 percent binaural hearing impairment, continuing medical benefits and \$2,045 in attorney's fees, the administrative law judge's findings in this regard were clearly not unreasonable. Although the Director also alleges that no determination could be made as to the propriety of the assessment because the settlement application was not appended to or reproduced in the administrative law judge's Decision and Order, we reject this hypertechnical argument. The parties' proposed settlement agreement was clearly a part of the record before the administrative law judge, and the fact that he chose to incorporate the agreement by reference, rather than actually reproducing it or attaching it to the Decision and Order, is not determinative on the facts presented.

We also reject the Director's argument that the administrative law judge's Decision and Order Approving Settlement should be set aside because it contains language which appears to discharge employer's liability for future claims not yet in existence. Specifically, the Director challenges the language contained in Paragraph 1 of the Order portion of the administrative law judge's Decision and Order Approving Settlement at 2, which provides that employer's payment of \$5,500 is "in full settlement of all claims for compensation arising out of, or in any way connected with any work-related hearing impairment sustained by Claimant during his employment by the Employer."

We reject the Director's contentions. In cases involving settlements of claims for a work-related hearing loss by retirees, where, as here, the settlement agreement as a whole clearly indicates a compromise settlement of the hearing loss in existence at the time of the settlement, the Board has construed the settlement as only applying to the hearing loss claim for which benefits were sought. *See Poole v. Ingalls Shipbuilding, Inc.*, 27 BRBS 230 (1993); *Kelly v. Ingalls Shipbuilding, Inc.*, 27 BRBS 117, 120 (1993). *See also Bath Iron Works Corp. v. Director, OWCP*, U.S. , 113 S.Ct. 692, 26 BRBS 151 (CRT)(1993). Consequently, we conclude that the administrative law judge's approval of the parties' agreement in this case does not violate Section 8(i) or 20 C.F.R. §702.241(g) and accordingly affirm his approval of the settlement. *Poole*, 27 BRBS at 235.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge