

M.J.)
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 Claimant-Petitioner)
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 v.)
)
 ENERGY CATERING SERVICE,) DATE ISSUED: 07/24/2008
 INCORPORATED)
)
 and)
)
 EAGLE PACIFIC INSURANCE COMPANY)
)
 Employer/Carrier-)
 Respondents) DECISION and ORDER

Appeal of the Decision and Order of Patrick M. Rosenow, Administrative Law Judge, United States Department of Labor.

M.J., Houma, Louisiana, *pro se*.

Henry H. LeBas and Todd A. Delcambre (LeBas Law Offices), Lafayette, Louisiana, for employer/carrier.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (2007-LHC-0919) of Administrative Law Judge Patrick M. Rosenow 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). In an appeal by a claimant without legal representation, 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. If they are, they must be affirmed. 33 U.S.C. §921(b)(3); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant, engaged to work as a galley hand for employer, allegedly sustained injuries on September 14, 1997, when the crew boat upon which he was traveling as a passenger ran aground. As a result of this incident, claimant filed a claim under the Act against employer and its carrier, as well as two federal lawsuits, one of which was settled by the pertinent parties on March 15, 1999.¹ Specifically, Magistrate Judge Lance M. Africk presided over settlement discussions involving claimant, his attorney at that time, Linda Meyer, the owner of the vessel, Graham Marine, employer's carrier, Eagle Pacific Insurance Company, and three of claimant's former attorneys who had intervened seeking fees and expenses for work previously performed on claimant's behalf. The discussions culminated in an agreement wherein Graham Marine agreed to pay claimant \$65,000, and Eagle Pacific agreed to pay claimant \$23,000 and to waive its lien of \$11,150.

Judge Africk, having determined that claimant was competent to proceed, questioned claimant to confirm that he knew he was waiving his right to a trial, his right to examine witnesses, and his right to have a judge decide his case. Judge Africk also questioned claimant to insure that he understood and wanted to execute the settlement agreement, and that he was entering the agreement of his own free will. At that time, claimant acknowledged that he understood he was releasing employer and its carrier from any liability for medical or indemnity benefits. Judge Africk thus approved the settlement subject to approval by the Department of Labor.

An application for approval of a Section 8(i) settlement, 33 U.S.C. §908(i), and a release of all claims, was thereafter prepared and signed by claimant and his lawyer. The district director approved the settlement on November 17, 1999, finding, among other things, that it was not procured by duress, and that it discharged employer/carrier's liability under the Act. In 2006, claimant, without the assistance of counsel, sought further review of his claim, alleging that the previously executed Section 8(i) settlement had been obtained by fraud.² The case was referred to the Office of Administrative Law Judges on February 12, 2007.

On July 10, 2007, employer filed a Motion for Summary Decision, to which claimant responded, on October 2, 2007, through submission of a 17-page handwritten

¹ The other federal lawsuit was dismissed with prejudice on October 12, 2000. Employer's Exhibit B.

² No party asserts that this action was untimely or that the settlement could not be reopened. *See Downs v. Director, OWCP*, 803 F.2d 193, 19 BRBS 36(CRT) (5th Cir. 1986).

summary of some of his exhibits and hundreds of pages of various documents from the case, along with an audiotape. After consideration of the parties' submissions, the administrative law judge granted employer's motion for summary decision and dismissed the claim. Claimant, without legal representation, appeals the administrative law judge's decision, and employer responds, urging affirmance.

Section 8(i) provides for the settlement of "any claim for compensation under this chapter" by a procedure in which an application for settlement is submitted for the approval of the district director or administrative law judge. Claimants are not permitted to waive their right to compensation except through settlements approved under Section 8(i). *See* 33 U.S.C. §§915, 916; *see generally Henson v. Arcwel Corp.*, 27 BRBS 212 (1993); *Norton v. National Steel & Shipbuilding Co.*, 25 BRBS 79 (1991), *aff'd on recon. en banc*, 27 BRBS 33 (1993)(Brown, J., dissenting). The procedures governing settlement agreements are delineated in the Act's implementing regulations. *See* 20 C.F.R. §§702.241-702.243. These regulations ensure that the approving official obtains the information necessary to determine whether the agreement is inadequate or procured by duress. *McPherson v. National Steel & Shipbuilding Co.*, 26 BRBS 71 (1992), *aff'g on recon. en banc*, 24 BRBS 224 (1991). Section 8(i) explicitly states that a settlement shall be approved "unless it is found to be inadequate or procured by duress." 33 U.S.C. §908(i).

The record supports the administrative law judge's decision in this case, as there is no evidence that claimant was under duress at the time he entered into his agreement, or that the settlement was obtained by fraud. As the administrative law judge found, Judge Africk fully explained the settlement agreement several times and secured claimant's assurance, at numerous times during the conference, that he fully understood the settlement and that he wanted to proceed with it. EX A, HT at 20, 22, 25, 26, 27. Nonetheless, Judge Africk asked claimant one last time at the conclusion of the conference whether "you still want to settle your case or do you want to try the case and go to trial" to which claimant replied "settle the case." EX A, HT at 28. Judge Africk also made certain that all parties were aware that the settlement was contingent on its approval by the district director pursuant to Section 8(i). EX A, HT at 9, 20. Turning to that approval, the district director found, based on the parties' stipulations, that claimant was represented by counsel, that the agreement was reached after a conference before a federal magistrate judge, that the agreement is clear and concise, and that "the agreed settlement is adequate and not procured by duress." EX F. Consequently, the district director approved the settlement as set forth in the stipulations.³ EX F.

³ The parties' settlement agreement comports with the Act and regulations. Section 702.242, 20 C.F.R. §702.242, implements Section 8(i), and requires the settlement application to be in the form of a stipulation signed by all parties, to contain a

In determining whether to grant a motion for summary decision, the fact-finder must determine, viewing the evidence in the light most favorable to the non-moving party, whether there are any genuine issues of material fact and whether the moving party is entitled to summary judgment as a matter of law. *See generally Han v. Mobil Oil Corp.*, 73 F.3d 872 (9th Cir. 1995). The administrative law judge properly found that claimant did not submit any affidavits to refute employer's motion, *see* 29 C.F.R. 18.40(c), and that the documents claimant submitted did not raise any genuine issues of fact concerning claimant's allegation of fraud. As set forth above, claimant repeatedly acknowledged, at the conference before Judge Africk and then again in the joint stipulations submitted in support of the Section 8(i) settlement before the district director, that he understood the terms of the settlement at that time and that he was under no duress and was freely entering into the agreement. Claimant's mere allegation of fraud is not sufficient to justify further proceedings to reopen the settlement in this case. *See generally Downs v. Texas Star Shipping Co., Inc.*, 18 BRBS 37 (1986), *aff'd sub nom. Downs v. Director, OWCP*, 803 F.2d 193, 19 BRBS 36(CRT) (5th Cir. 1986). We thus affirm the administrative law judge's decision to grant employer's motion for summary decision as it is supported by substantial evidence, rational, and in accordance with law. 33 U.S.C. §921(b)(3); *see also* 29 C.F.R. §§18.40(d), 18.41(a). Consequently, we affirm the administrative law judge's grant of employer's motion for summary decision and the dismissal of claimant's claim.

brief summary of the facts of the case including a description of the incident, a description of the nature of the injury including the degree of impairment and/or disability, a description of the medical care rendered to date of settlement, and a summary of compensation paid. 20 C.F.R. §702.242(a). Section 702.242(b) requires that the application contain, *inter alia*, the reasons for the settlement and its terms, information on whether or not the claimant is working or is capable of working, and a justification for the adequacy of the settlement amount. 20 C.F.R. §702.242(b).

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