

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



BRB No. 19-0089

RICHARD WAMALA)
Claimant-Petitioner)
v.)
SOC-SMG, INCORPORATED)
and) DATE ISSUED: 06/18/2019
INSURANCE COMPANY OF THE STATE)
OF PENNSYLVANIA)
Employer/Carrier-)
Respondents) DECISION and ORDER

Appeal of the Decision and Order Granting Employer and Carrier's Motion for Summary Decision and Dismissing Claim of Larry S. Merck, Administrative Law Judge, United States Department of Labor.

Richard Wamala, Kampala, Uganda.

Lawrence P. Postol and Lauren M. Bridenbaugh (Postol Law Firm, P.C.), McLean, Virginia, for employer/carrier.

Before: BOGGS, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant, appearing without counsel, appeals the Decision and Order Granting Employer and Carrier's Motion for Summary Decision and Dismissing Claim (2017-LDA-00952) of Administrative Law Judge Larry S. Merck rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et*

seq., as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (the Act). In an appeal by a claimant without legal representation, we will review the administrative law judge's findings of fact and conclusions of law to determine if they are rational, supported by substantial evidence, and in accordance with law. If they are, they must be affirmed. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant was employed by employer as a security guard in Iraq. On April 17, 2008, claimant was injured when, while changing a tire on a vehicle, the vehicle fell off the supporting tracks and struck him, resulting in a fracture of his right femur and a back injury. Settlement, Ex. 4 of Emp. Mot. for Summ. Decision. Dr. Nyamwihura at Industrial Medical Services treated claimant, stated he would be unable to return to his previous work, and assessed him with a 30 percent permanent disability.

The parties entered into a settlement agreement pursuant to Section 8(i) of the Act, 33 U.S.C. §908(i). Under the terms of the settlement, claimant received a lump-sum payment of \$45,000, which was off-set by the \$5,500 employer paid to claimant prior to the settlement.¹ The settlement further stated that claimant agreed that the amount was adequate compensation for any permanent disability arising from the accident. Settlement ¶ 10. It also stated that claimant certified that the settlement was not procured by fraud or duress and that the settlement was not subject to modification. Settlement ¶¶ 11, 14. Claimant signed an affidavit approving the terms of the settlement on June 10, 2009.² The district director approved the settlement in a Compensation Order dated November 20, 2009.

Claimant has attempted to challenge the adequacy of the settlement through correspondence with employer's counsel and the Department of Labor since 2012. The case was transferred to the Office of Administrative Law Judges based on claimant's August 22, 2017 complaint alleging "underpayment for injuries [he] sustained while changing a tire on a company vehicle." Claimant argued that the settlement should be set aside because it was obtained through fraud. He alleged that: employer mischaracterized the facts surrounding his injury; employer told claimant he should distance himself from his lawyers and not obtain new legal representation; employer intentionally ignored a doctor's report and left it out of the settlement agreement; and employer pressured claimant

¹ The settlement amount consisted of \$40,000 for compensation benefits and \$5,000 for past and future medical benefits.

² Claimant was initially represented by counsel but prior to reaching the settlement, claimant dismissed his attorneys.

into signing the agreement without giving him sufficient time to consider it. Employer filed a motion for summary decision with the administrative law judge and claimant filed documents and a response to employer's motion.

The administrative law judge granted employer's motion for summary decision and dismissed the claim. The administrative law judge noted that, to the extent claimant was seeking modification of the settlement agreement, Section 22 of the Act specifically prohibits modification of a settlement. 33 U.S.C. §922. He further rejected claimant's contention that the settlement was deficient because it did not include a doctor's report. Decision and Order at 7. He also noted that Rule 60 of the Federal Rules of Civil Procedure, which provides grounds for relief from a final judgment on the grounds of fraud, provides a one-year time frame in which to raise such a claim and that this period had long expired. *See id.* at 9. Lastly, the administrative law judge noted that claimant did not offer any evidence of fraud and thus there was no basis to justify reopening the settlement agreement. *See id.* at 10-11. He therefore dismissed the claim and granted employer's motion for summary decision.

Claimant, without the assistance of counsel, appeals the administrative law judge's decision.³ Employer filed a response, urging affirmance.

In ruling on a motion for summary decision, the administrative law judge must view all facts in the light most favorable to the non-moving party and determine if there are any genuine issues of material fact in dispute and the moving party is entitled to summary decision as a matter of law. *Morgan v. Cascade General, Inc.*, 40 BRBS 9 (2006); 29 C.F.R. §18.72. Section 8(i) of the Act, 33 U.S.C. §908(i), governs settlements of claims. A settlement agreement must be approved by the fact-finder within 30 days of the submission of the agreement unless the settlement is inadequate, was procured by duress, or is not in conformance with the regulatory criteria. 20 C.F.R. §§702.241-702.243. Once a settlement is approved and the time for appeal has expired, it is binding and is not subject to rescission. *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*, 196 F.3d 484 (9th Cir.) (table), *cert. denied*, 528 U.S. 1052 (1999). Section 22 of the Act, 33 U.S.C. §922, which governs modification of decisions, specifically states that it does not authorize the modification of settlements. In this case, the administrative law judge addressed each of claimant's arguments, viewing the facts in the light most favorable to claimant, and determined the settlement was final and claimant had not identified any reason to dispute the validity of

³ Claimant submitted an affidavit and an additional medical report in support of his appeal but the Board is not permitted to accept new evidence. 20 C.F.R. §802.301.

the settlement. He therefore dismissed claimant's claim and granted employer's motion for summary decision. We affirm.

The settlement in this case became final when it was not appealed within 30 days of its approval on November 20, 2009. Thus, the administrative law judge properly stated that the settlement in this case is final and cannot be set aside, rescinded or modified except under exceptional circumstances such as fraud, as discussed below, or incapacity. *See* 33 U.S.C. §922; *see generally Diggles v. Bethlehem Steel Corp.*, 32 BRBS 79 (1998); *Porter*, 31 BRBS at 113. Moreover, claimant's assertion that the omission of a doctor's report is sufficient to invalidate the settlement is without merit. Once a settlement has become final, as here, an allegation of a deficiency in the documentation underlying the settlement is not a basis to reopen the final settlement. *Diggles*, 32 BRBS 79.

The administrative law judge also found that claimant's attempt to reopen the settlement is similar to a motion under Rule 60(b) of the Federal Rules of Civil Procedure for relief from a final judgment. He properly found, however, that claimant's complaint was untimely. Rule 60(c) states that such motions must be filed within one year of the entry of the judgment or order. In this case, the district director approved the settlement on November 20, 2009. Claimant began efforts to set aside the settlement in 2012, and filed the present claim on August 22, 2017. Consequently, the administrative law judge correctly found that claimant's attempt to reopen his settlement is untimely. We also reject claimant's assertion that his "failure to timely raise these fraudulent acts and omissions is excused under 33 U.S.C. §912(d)(2)." Section 12 applies to the time for giving notice of new injury, not for reopening an approved final settlement.

Next, we address claimant's assertion that the settlement should be rescinded on the basis of fraud. The Board has indicated that a settlement may be re-opened if a party establishes that the settlement was fraudulently secured. *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). In this case, however, the administrative law judge considered claimant's assertions of fraud and concluded "Claimant has offered only self-serving allegations without any accompanying evidence of fraud." Decision and Order at 10. The settlement agreement contains consideration of why the lump-sum amount was adequate compensation. In addition, it stated that claimant certified the agreement was not procured by fraud or duress. Settlement ¶¶ 10, 11. Claimant's agreement to the settlement was in the form of a notarized affidavit, which also stated that he had reviewed and fully understood the terms of the settlement and approved it. Claimant did not submit any evidence supporting his contentions. Under these facts, the administrative law judge did not err in finding that there is no evidence in the record which would permit a finder of fact to conclude that the settlement was the result of fraud or duress. 29 C.F.R. §18.72(e).

Therefore, this finding is affirmed, *Lambert v. Atlantic & Gulf Stevedores*, 17 BRBS 68 (1985), and we affirm the finding that employer is entitled to summary decision.

Accordingly, the administrative law judge's Decision and Order Granting Employer and Carrier's Motion for Summary Decision and Dismissing Claim is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge