BRB No. 03-0473

JANINE SCHULTZ	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
UNITED STATES MARINE CORPS/MWR	)	DATE ISSUED:MAR 17, 2004
	)	
Self-insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Approving Settlement Agreement, Amended Decision and Order Approving Settlement, Order Regarding Post-Settlement Agreement, and Second Order Regarding Settlement Request of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

Janine Schultz, Hubert, North Carolina, *pro se*.

James M. Mesnard (Seyfarth Shaw), Washington, D.C., for self-insured employer.

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

PER CURIAM:

Claimant, without legal representation, appeals the Decision and Order Approving Settlement Agreement, Amended Decision and Order Approving Settlement, Order Regarding Post-Settlement Agreement, and Second Order Regarding Settlement Request (02-LHC-1487) of Administrative Law Judge Linda S. Chapman 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*., as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *et seq*. (the Act). In an appeal by a claimant without legal representation, we will review the findings of fact and conclusions of law of the administrative law judge to determine if they are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). If they are, they must be affirmed.

Claimant, a recreation attendant, alleged she sustained a totally disabling psychological injury, *i.e.*, traumatic shock disorder, as a result of a verbal confrontation between herself and a patron of the sports center where she was employed at Camp LeJeune, North Carolina, on July 26, 2001.[1] Following a full evidentiary hearing on October 10, 2002, the parties entered into settlement discussions which culminated in a settlement agreement under Section 8(i), 33 U.S.C. §908(i), signed on November 8, 2002.[2] Claimant was represented by an attorney at this time.

The administrative law judge's Decision and Order approving the settlement was filed on December 5, 2002. On December 9, 2002, employer filed a motion for an errata order, as the administrative law judge's initial decision recited incorrect monetary figures. The administrative law judge's amended decision is dated December 17, 2002, but was not filed by the district director until March 13, 2003. On March 25, 2003, the administrative law judge received a letter from claimant's husband, stating that he was acting for claimant under a power of attorney and asking that the settlement agreement be rescinded. The administrative law judge denied this request in an Order filed on April 10, 2003. Claimant filed another motion on April 11, 2003, seeking to enforce other settlement conditions to which employer allegedly agreed. In an Order filed on May 5, 2003, the administrative law judge stated that employer had complied with the settlement agreement signed in December 2002, and that the agreement could not be modified in any way. Claimant appeals the administrative law judge's decisions.[3] Employer responds, urging that the administrative law judge's refusal to rescind this agreement be affirmed.

Section 8(i) of the Act, 33 U.S.C. §908(i), provides for the discharge of employer's liability for benefits where an application for settlement is approved by the district director or administrative law judge. A settlement agreement must be approved by the fact finder within 30 days of the submission of the agreement, unless the settlement is inadequate, procured by duress, or not in conformance with the regulatory

[1] The record reflects that claimant has a long history of treatment for traumatic shock disorder. EXS 16, 18.

[2] The settlement agreement provided that claimant receive the lump sum of $10,000, which encompasses $7,000 in compensation, $50 in back pay, and $2,950 in medical benefits; claimant's counsel received a fee of $2,500 payable by employer.

[3] Claimant has attached several documents to the petition for review. It is well established that the Board is precluded from considering new evidence that was not submitted to the administrative law judge nor may the Board conduct a *de novo* review of the evidence. 33 U.S.C. §921(b)(3); 20 C.F.R. §802.301.

criteria. The procedures governing settlement agreements are delineated in the implementing regulations at 20 C.F.R. §§702.241-702.243. *See McPherson v. Nat'l Steel & Shipbuilding Co.*, 24 BRBS 224 (1991), *aff'd on recon. en banc*, 26 BRBS 71 (1992). It is well established that Section 8(i) settlement agreements are final under the Act; Section 22 of the Act, 33 U.S.C. §922, explicitly states that settlements are not subject to modification. *See generally 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); *Diggles v. Bethlehem Steel Corp*., 32 BRBS 79 (1998); *Rochester v. George Washington University*, 30 BRBS 233 (1997). Once a settlement is approved and the time for appeal has expired, it is binding upon claimant and is not subject to rescission by claimant. *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*, 176 F.3d 484 (9th Cir. 1999)(table), *cert. denied*, 528 U.S. 1052 (1999).

We first address employer's contention, raised in its response brief, that claimant's appeal of the administrative law judge's approval of the settlement agreement is untimely. *See Dalle-Tezze v. Director, OWCP*, 814 F.2d 129, 10 BLR 2-62 (3d Cir. 1987); *Farrell v. Norfolk Shipbuilding & Dry Dock Co.*, 32 BRBS 283, *modifying in part* 32 BRBS 118 (1998). Employer contends that its motion for an errata order and the administrative law judge's issuance of such did not toll the time for filing an appeal of the administrative law judge's December 5, 2002, Decision and Order approving the settlement. We agree with employer. Timely motions for reconsideration toll the time for filing an appeal. 20 C.F.R. §802.206(a). A motion to correct clerical errors, such as in the instant case where the administrative law judge merely recited the wrong monetary figures to which the parties agreed, does not toll the time for filing a notice of appeal of the underlying compensation order. *Graham-Stevenson v. Frigitemp Marine Div.*, 13 BRBS 558 (1981) (Miller, J., dissenting). The administrative law judge's Decision and Order approving the settlement was filed in the office of the district director on December 5, 2002, and became final 30 days thereafter on January 3, 2003. 33 U.S.C. §921(a); 20 C.F.R. §§702.350, 802.205(a). In order for claimant's appeal to have been timely, it would have to have been filed within this 30-day time frame. Employer's subsequent motion and the administrative law judge's Order correcting the clerical error did not extend the time for filing an appeal. Claimant's appeal was not filed until April 2003, and therefore is untimely as to the Decision and Order approving the settlement. *Graham-Stevenson*, 13 BRBS at 559. As the administrative law judge's approval of the settlement became final prior to the time claimant filed her appeal, the administrative law judge properly denied claimant's subsequent motions to rescind the settlement, as final settlements are not subject to modification or rescission by claimant. *Diggles*, 32 BRBS 79; *Porter*, 31 BRBS 112. We therefore affirm the administrative law judge's Order Regarding Post-Settlement Agreement and Second Order Regarding Settlement Request.

In any event, the parties' settlement agreement comports with the Act and regulations, and was properly approved by the administrative law judge. 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 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. If the settlement application covers medical benefits, the parties must estimate the claimant's need for future medical treatment and the cost thereof, as well provide any information concerning collateral sources available for the payment of medical expenses. 20 C.F.R. §702.242(b).

As discussed by the administrative law judge, the parties' application for settlement approval contains the information required by Section 702.242(a), (b). *See generally Nelson v. American Dredging Co.,* 143 F.3d 780, 32 BRBS 115(CRT) (3d Cir. 1998), *aff'g in pert. part* 30 BRBS 205 (1996). The agreement relates the facts of the case and the issues in dispute between the parties regarding the compensability of claimant's claim. It states that claimant's collateral source of medical treatment is the Veterans' Administration, as claimant previously was in the Marine Corps. The administrative law judge observed that claimant was represented by counsel, and that the agreement to settle is based on each party's consideration of the likelihood of success if the administrative law judge were to adjudicate the claim. *See generally Rochester*, 30 BRBS 233. The administrative law judge specifically found the proposed settlement to be adequate and not procured by any duress or fraud. *See generally Olsen v. General Engineering & Machine Works*, 25 BRBS 169 (1991). As claimant was represented by counsel, and as the administrative law judge properly relied on the parties' representations in the agreement itself as to the adequacy of the settlement, *see Bonilla* 859 F.2d at 1486, 21 BRBS at 188(CRT), we hold that the administrative law judge properly approved the settlement agreement.[4]

[4] Given our decision, we need not address employer's challenge to the legitimacy of claimant's assigning power of attorney to her husband during a period of time when her mental competency to do so has not been established.

Accordingly, the administrative law judge's Decision and Order Approving Settlement Agreement, Amended Decision and Order Approving Settlement, Order Regarding Post-Settlement Agreement, and Second Order Regarding Settlement Request are affirmed.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge