



BRB No. 17-0353

ROBERT ROLLO	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SERVICE EMPLOYEES	)	
INTERNATIONAL, INCORPORATED	)	
	)	
and	)	
	)	
INSURANCE COMPANY of the STATE OF	)	DATE ISSUED: <u>Mar. 27, 2018</u>
PENNSYLVANIA c/o CHARTIS	)	
WORLDSOURCE	)	
	)	
Employer/Carrier-	)	
Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	ORDER

The Director, Office of Workers' Compensation Programs (the Director), has filed a motion to dismiss claimant's appeal of the district director's letter denying claimant's petition to set aside the district director's November 2013 order approving the parties' Section 8(i), 33 U.S.C. §908(i), settlement.

Claimant was injured in 2005 while working in Iraq. Claimant and employer, both represented by counsel, resolved the claim for benefits via a Section 8(i) settlement, and the district director filed his approval order on November 21, 2013. On February 24, 2017, claimant, represented by different counsel, petitioned the district director to set aside the approval of the 2013 settlement, asserting the settlement was inadequate, fraudulent, and procured by duress. In March 2017, the claims examiner denied claimant's request, and in

April 2017, the district director reiterated the denial in a letter, informing claimant that the settlement had become final.

Claimant appealed the district director's letter. Employer responded, urging the Board to summarily deny the appeal, and the Director responded with a motion to dismiss claimant's appeal. Neither claimant nor employer responded to the Director's motion. By Order dated August 31, 2017, the Board granted the Director's motion on the grounds that the district director's letter did not constitute a final, appealable order.

On September 15, 2017, claimant moved the Board to vacate its Order, because neither claimant nor employer was served with the Director's motion to dismiss. The Director acknowledged this error and consented to the motion to vacate. By Order dated October 16, 2017, the Board vacated its August 31, 2017 order. The Board reinstated claimant's appeal on the docket and directed the Director to refile his motion to dismiss and to serve it on the parties. Claimant and employer were afforded time to respond to the motion.

On October 17, 2017, the Director refiled his motion to dismiss claimant's appeal. In moving to dismiss claimant's appeal, the Director asserts that the district director's letter is not a final, appealable order, that any appeal of the 2013 approval order is untimely, and that, to the extent claimant is permitted to challenge a settlement on equitable grounds, his allegations must first be resolved by an administrative law judge. Claimant responds in opposition to the motion. Claimant asserts that the district director's letter constitutes a final appealable decision as to claimant's motion to set aside the 2013 settlement, that his motion to set aside the settlement for fraud concerns only a legal issue and does not involve a factual dispute, and that the district director has inherent equitable authority to revisit an approved Section 8(i) settlement that has become final. Employer responds, disputing claimant's assertion that his motion raises no factual dispute and urging the Board to dismiss claimant's appeal.

Section 802.201(a) of the Board's regulations provides that "[a]ny party or party-in-interest adversely affected or aggrieved by a decision or order . . . may appeal a decision or order of an administrative law judge or [district director]. . . ." 20 C.F.R. §802.201(a) (emphasis added). In this case, the district director sent a letter dated April 11, 2017, to claimant's counsel denying the petition to reopen the parties' 2013 settlement because the settlement order became final 30 days after the date of filing. Contrary to claimant's assertion, this letter is not a "decision" or an "order," and thus is not a final, appealable action. See generally *Craven v. Director, OWCP*, 604 F.3d 902, 44 BRBS 31(CRT) (5th Cir. 2010); *Healy Tibbitts Builders, Inc. v. Cabral*, 201 F.3d 1090, 33 BRBS 209(CRT) (9th Cir.), cert. denied, 531 U.S. 956 (2000); *Potter, et al. v. Electric Boat Corp.*, 41 BRBS 69, 72 n.3 (2007); *Maria v. Del Monte/Southern Stevedore*, 22 BRBS 132 (1989) (*en banc*),

*vacating on recon.* 21 BRBS 16 (1988); 20 C.F.R. §702.392.<sup>1</sup> Therefore, claimant's appeal must be dismissed.

We express no opinion on claimant's challenges to the settlement agreement. However, the Director correctly notes that allegations raising factual disputes must be resolved by an administrative law judge. *See generally Healy Tibbitts Builders, Inc. v. Cabral*, 201 F.3d 1090, 33 BRBS 209(CRT) (9th Cir.), *cert. denied*, 531 U.S. 956 (2000). Contrary to claimant's assertion, in arguing that the settlement agreement should be set aside because the underlying medical evidence establishes that the claim should not have been settled and that claimant was permanently and totally disabled, claimant raises a factual issue which employer disputes. Thus, the district director is without authority to resolve it. *See* 20 C.F.R. §702.315 (stating district director has the authority to issue a compensation order only when the parties are in agreement);<sup>2</sup> *see also Downs v. Texas Star Shipping Co.*, 18 BRBS 37 (1986), *aff'd sub nom. Downs v. Director, OWCP*, 803 F.2d 193, 19 BRBS 36(CRT) (5th Cir. 1986).

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<sup>1</sup> Section 702.392 of the regulations provides:

An appeal raising a substantial question of law or fact may be taken from a *decision* with respect to a claim under the Act. Such appeals may be taken from *compensation orders* when they have been filed as provided for in [20 C.F.R. §702.349].

20 C.F.R. §702.392 (emphasis added).

<sup>2</sup> Unlike certain issues concerning medical benefits, the issue raised by claimant is not one which is reserved, by regulation or statute, for the district director's consideration. *See, e.g.*, 33 U.S.C. §907(b), (d)(2); 20 C.F.R. §§702.406(b), 702.407(b), (c).

Accordingly, we grant the Director's motion to dismiss claimant's appeal.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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RYAN GILLIGAN  
Administrative Appeals Judge

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JONATHAN ROLFE  
Administrative Appeals Judge