



BRB No. 18-0126  
OWCP No. 06-207774

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| JOHN N. WOODS   | ) |                                  |
|   | ) |                                  |
| Claimant-Petitioner   | ) |                                  |
|   | ) |                                  |
| v.  | ) | DATE ISSUED: <u>Mar. 7, 2018</u> |
|   | ) |                                  |
| HARRY PEPPER AND ASSOCIATES,<br>INCORPORATED  | ) |                                  |
|   | ) |                                  |
| Employer-Respondent   | ) |                                  |
|   | ) |                                  |
| DIRECTOR, OFFICE OF WORKERS'<br>COMPENSATION PROGRAMS, UNITED<br>STATES DEPARTMENT OF LABOR | ) |                                  |
|   | ) |                                  |
| Party-in-Interest   | ) | ORDER                            |

Claimant, who is without legal representation, has filed a timely notice of appeal of the Order of Denial to Set Aside 8(I) (sic) of District Director Kristina K. Hall, which was filed on November 3, 2017. 33 U.S.C. §921; 20 C.F.R. §802.205. In addition, claimant timely appeals the claims examiner’s letter of November 29, 2017, informing claimant of the “delay” in referring the case to the Office of Administrative Law Judges (OALJ). Claimant’s appeal is assigned the Board’s docket number BRB No. 18-0126. All correspondence concerning this appeal must bear this number. 20 C.F.R. §802.210.

In an Order issued on June 23, 2015, the Board dismissed claimant’s appeal of a letter he received from the Director, Office of Workers’ Compensation Programs, informing claimant that the September 2010 Section 8(i), 33 U.S.C. §908(i), settlement between claimant and employer was final and unalterable.<sup>1</sup> *Wood v. Harry Pepper & Assoc., Inc.*, BRB No. 15-0244 (June 23, 2015). The Board held that the Director’s letter was not appealable, because it was not a final “decision or order” under Section 21(b)(3)

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<sup>1</sup> The settlement was for \$74,990; the agreement was approved by the district director on September 28, 2010.

of the Act, 33 U.S.C. §921(b)(3). However, the Board remanded the case to the district director to investigate and address claimant's allegation that the settlement was fraudulently obtained.

In her November 3, 2017, Order, the district director rejected claimant's contention that he had never received the compensation check, noting that employer supplied evidence that claimant received and cashed the check. The district director also found no evidence that claimant signed the settlement agreement under duress. Thus, she found that the settlement is final and cannot be set aside.

On November 17, 2017, claimant requested that the district director transfer the case to the OALJ for a formal hearing.<sup>2</sup> In the November 29, 2017, letter, the claims examiner stated that the case was not ready for referral because, "This claim has been resolved by order dated 11/03/2017," and "There were no new issues listed for resolution on the LS-18." The claims examiner informed claimant that he needed to identify new issues and/or facts that were not addressed in the November 3, 2017, Order, before the case would be referred.

In his notice of appeal, claimant contends that the settlement was fraudulently procured by employer and that the district director erred in refusing to transfer the case to the OALJ for a hearing.

The Board does not have jurisdiction to substantively address an appeal of the district director's finding that the Section 8(i) settlement was not fraudulently procured. *See, e.g., Craven v. Director, OWCP*, 604 F.3d 902, 44 BRBS 31(CRT) (5th Cir. 2010) (Board does not have jurisdiction to review a memorandum of informal conference); 33 U.S.C. §921(b)(3); 20 C.F.R. §802.201(a); *see also Maria v. Del Monte/Southern Stevedore*, 22 BRBS 132 (1989) (en banc); *Anweiler v. Avondale Shipyards, Inc.*, 21 BRBS 271 (1988). Claimant disagreed with the district director's conclusion and sought a formal hearing; thus the district director's order is not a "final" order on an issue over which she has jurisdiction. *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); 20 C.F.R. §702.316.

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<sup>2</sup> The case had previously been transferred to the OALJ on July 29, 2015, after the Board's Order was issued. However, the administrative law judge granted claimant's motion to dismiss his claim without prejudice, as claimant had filed an appeal of the Board's Order with the United States Court of Appeals for the Eleventh Circuit. The circuit court dismissed claimant's appeal on January 13, 2016.

In addition, the Board has learned that, on February 2, 2018, claimant's case was docketed by the OALJ. *See Ingalls Shipbuilding, Inc. v. Asbestos Health Claimants*, 17 F.3d 130, 28 BRBS 12(CRT) (5th Cir. 1994) (district director has a mandatory, non-discretionary duty to transfer a case for hearing upon the request of a party when the claim cannot be settled amicably). As the relief claimant sought by appealing, i.e., transfer of his case to the OALJ, has been accomplished, we dismiss claimant's appeal.<sup>3</sup> *See generally Hitt v. Newport News Shipbuilding & Dry Dock Co.*, 38 BRBS 47 (2004).

Accordingly, claimant's appeal is dismissed.

SO ORDERED.

BETTY JEAN HALL, Chief

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Administrative Appeals Judge

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RYAN GILLIGAN  
Administrative Appeals Judge

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JONATHAN ROLFE  
Administrative Appeals Judge

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<sup>3</sup> Claimant may appeal the administrative law judge's final Decision and Order to the Board in accordance with Section 21 of the Act, 33 U.S.C. §921.