

RICHARD C. HUTCHESON, III )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 SEA RAY BOATS, INCORPORATED ) DATE ISSUED: 05/11/2011  
 )  
 and )  
 )  
 ZURICH AMERICAN INSURANCE )  
 COMPANY )  
 )  
 Employer/Carrier- )  
 Respondents ) DECISION and ORDER

Appeal of the Order Denying Request to Re-Open, Reconsider, Modify, or Set Aside Decision and Settlement of Stuart A. Levin, Administrative Law Judge, United States Department of Labor.

Richard C. Hutcheson, III, Merritt Island, Florida, *pro se*.

Michael F. Wilkes, Melbourne, Florida, for employer/carrier.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Order Denying Request to Re-Open, Reconsider, Modify, or Set Aside Decision and Settlement (2006-LHC-00645) of Administrative Law Judge Stuart A. Levin 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 *pro se* claimant, 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant alleged he sustained an injury to his low back at work in 2005. On July 5, 2007, the administrative law judge denied claimant's claim. Claimant appealed, and the Board affirmed the administrative law judge's denial of benefits. *R.H. [Hutcheson] v. Sea Ray Boats, Inc.*, BRB No. 07-0914 (May 28, 2008). Claimant appealed the Board's decision to the United States Court of Appeals for the Eleventh Circuit, and while the case was pending before the court, the parties negotiated a settlement agreement pursuant to Section 8(i), 33 U.S.C. §908(i). The court remanded the case so the settlement could be approved.<sup>1</sup> On April 10, 2009, the administrative law judge acknowledged that claimant was represented by counsel who assessed the risks of litigation and sought approval of the settlement in claimant's best interests. As the administrative law judge determined the settlement agreement was not procured under duress and was adequate, he approved it. The Eleventh Circuit then dismissed claimant's appeal. The order approving the settlement was not appealed to the Board.

On March 16, 2010, claimant filed a letter with the administrative law judge asking him to set aside the 2009 settlement agreement and the Order approving the settlement, to reopen the claim for compensation, and to reconsider and/or modify the 2007 decision denying the claim for benefits. As claimant was no longer represented by counsel, the administrative law judge addressed each motion with respect to both the 2007 and 2009 decisions. The administrative law judge denied the motion for reconsideration, finding that it was not filed within 28 days after the entry of either order. Order at 2. He denied claimant's motion for modification of the April 2009 Order approving the settlement agreement on the ground that Section 22 of the Act, 33 U.S.C. §922, specifically "does not authorize the modification of settlements." He denied the motion for modification of the April 2007 Decision and Order because the settlement agreement subsumed the decision denying benefits such that the decision was no longer subject to modification or re-opening. Order at 2-3. The administrative law judge also denied claimant's motion to set aside the settlement, as he found no evidence that the agreement was procured by duress or fraud or that claimant lacked the mental capacity to comprehend what the settlement entailed. Order at 3. Claimant, without counsel, appeals the administrative law judge's Order denying the motions, and employer responds, urging affirmance.

We affirm the administrative law judge's denial of claimant's motion for reconsideration of either the 2007 Decision and Order or the 2009 Order. A timely motion for reconsideration of an administrative law judge's decision is one that is filed

---

<sup>1</sup>Pursuant to the agreement, claimant would receive a lump sum of \$7,150 for all past and present benefits of any kind for his alleged injury. Claimant's counsel would receive \$1,350 for his services and costs. Order Approving Settlement.

within 10 days after the decision is filed in the district director's office. *See Galle v. Ingalls Shipbuilding, Inc.*, 33 BRBS 141 (1999), *aff'd sub nom. Galle v. Director, OWCP*, 246 F.3d 440, 35 BRBS 17(CRT) (5<sup>th</sup> Cir.), *cert. denied*, 534 U.S. 1002 (2001); 20 C.F.R. §802.206(a), (b)(1).<sup>2</sup> As no motion for reconsideration was filed within 10 days of the filing of either Order, claimant's motion is untimely, and the administrative law judge properly denied it.

Claimant contends the administrative law judge erred in denying his motion for modification of the decisions and/or the settlement agreement. Section 22 of the Act provides the only means for re-opening a claim that has been finally adjudicated. It states:

Upon his own initiative, or upon the application of any party in interest . . . , on the ground of a change in conditions or because of a mistake in a determination of fact by the [administrative law judge], the [administrative law judge] may, at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one year after the rejection of a claim, review a compensation case . . . . *This section does not authorize the modification of settlements.*

33 U.S.C. §922 (emphasis added). Subsequent to the issuance of the 2007 Decision and Order denying benefits and the Board's affirmance thereof in 2008, claimant appealed the unfavorable decisions. He agreed to settle the case while it was on appeal to the circuit court. The administrative law judge rationally found that the right to seek modification of the decision denying benefits was extinguished upon claimant's agreeing to settle his

---

<sup>2</sup>The administrative law judge mistakenly cited the Board's decision in *Galle v. Ingalls Shipbuilding, Inc.*, 33 BRBS 141 (1999), *aff'd sub nom. Galle v. Director, OWCP*, 246 F.3d 440, 35 BRBS 17(CRT) (5<sup>th</sup> Cir.), *cert. denied*, 534 U.S. 1002 (2001), for the proposition that the deadline for filing a motion to reconsider is covered by Federal Rule of Civil Procedure (FRCP) Rule 59(e). That rule has been revised to provide that "motions to alter or amend a judgment must be filed no later 28 days after the entry of the judgment." Accordingly, the administrative law judge held that a timely motion for reconsideration is one filed within 28 days of entry of the judgment. Review of *Galle*, reveals, however, that the Board held that motions for reconsideration before the administrative law judge are governed by the Board's regulation at 20 C.F.R. §802.206, which the Board observed, was based on FRCP 59(e). Unlike the Federal Rule, the Board's regulation has not been revised: it continues to provide a period of only ten days for filing motions for reconsideration. The Fifth Circuit upheld the Board's application of its regulation. *Galle*, 246 F.3d 440, 35 BRBS 17(CRT). Thus, a party has only ten days in which to seek reconsideration of an administrative law judge's decision.

claim for \$7,150. *See generally Wheeler v. Newport News Shipbuilding & Dry Dock Co.*, 43 BRBS 179 (2010), *aff'd*, \_\_\_ F.3d \_\_\_, No. 10-1164, 2011 WL 541805 (4<sup>th</sup> Cir. Feb. 15, 2011); *Alexander v. Avondale Industries, Inc.*, 36 BRBS 142 (2002). The administrative law judge's 2009 Order approved the Section 8(i) settlement between the parties, and Section 22 of the Act specifically prohibits the modification of settlement agreements. 33 U.S.C. §922; *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 (9<sup>th</sup> Cir.) (table), *cert. denied*, 528 U.S. 1052 (1999). Therefore, we affirm the administrative law judge's denial of claimant's motion for modification. *Alexander*, 36 BRBS 142.

Claimant also challenges the administrative law judge's denial of the motion to set aside the settlement agreement. In addressing this request, the administrative law judge considered whether claimant could establish that the agreement was procured by fraud or under duress or whether claimant lacked the mental capacity to understand the settlement. The administrative law judge found no evidence that the settlement in this case was procured by fraud or duress when he approved it in 2009. Additionally, the administrative law judge found that claimant has not shown that he lacked the mental capacity to understand the settlement, especially as he was represented by counsel at the time the settlement was agreed upon. Accordingly, the administrative law judge denied claimant's motion to set aside the settlement. These findings and conclusions are rational.<sup>3</sup> *Diggles v. Bethlehem Steel Corp.*, 32 BRBS 79 (1998); *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) (5<sup>th</sup> Cir. 1986). Therefore, we affirm the administrative law judge's denial of claimant's motion to set aside the settlement. As the administrative law judge properly found that claimant presented no grounds for overturning the prior decisions, he properly denied the relief requested by claimant.

---

<sup>3</sup>Although claimant made allegations to the administrative law judge that there may have been criminal conduct by his former employer's customers, the administrative law judge rationally found that claimant failed to establish that such conduct was related to the settlement.

Accordingly, the administrative law judge's Order Denying Request to Re-Open, Reconsider, Modify, or Set Aside Decision and Settlement is affirmed.

SO ORDERED.

---

ROY P. SMITH  
Administrative Appeals Judge

---

REGINA C. McGRANERY  
Administrative Appeals Judge

---

JUDITH S. BOGGS  
Administrative Appeals Judge