

BRB No. 01-0140

THOMAS EVANS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
SEA FAB INCORPORATED)	DATE ISSUED: <u>Sept. 27, 2001</u>
)	
and)	
)	
LIBERTY MUTUAL INSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order Approving Compromise Settlement of Richard D. Mills, Administrative Law Judge, United States Department of Labor.

Thomas Evans, Mathiston, Mississippi, *pro se*.

Bonnie J. Murdoch (Taylor, Day & Currie), Jacksonville, Florida, for employer/carrier.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Approving Compromise Settlement (00-LHC-0874) of Administrative Law Judge Richard D. Mills 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 filed by a claimant without representation, 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. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3); 20 C.F.R. §802.211(e). If they are, they must be affirmed.

Claimant sustained work-related injuries on March 1, 1988, when he fell off a scaffold. Employer paid temporary total disability benefits through June 5, 1989. Claimant sought additional disability and medical benefits, and employer opposed the claim on the grounds that claimant's

claim was not timely filed, that claimant could return to his usual work, and that claimant was not in need of further medical treatment for his work injuries. After the case was referred to the administrative law judge, the parties entered into a settlement agreement which provided for a lump sum payment of \$37,000, representing \$15,000 for disability benefits, \$15,000 for past and future medical benefits with the estimate that \$10,000 of this sum will represent the cost of future medical care, and \$7,000 for an attorney's fee for claimant's counsel. The settlement agreement was signed by claimant, his attorney, and counsel for the employer/carrier. Thereafter, the settlement agreement was approved by the administrative law judge in a Decision and Order dated August 30, 2000, pursuant to Section 8(i) of the Act, 33 U.S.C. §908(i). The administrative law judge found that the settlement is in claimant's best interest, is adequate, and was not procured by duress.

Claimant, representing himself, states that he is appealing the settlement of the claim for future medical benefits, as he will require additional medical care. Employer responds, contending that claimant's appeal was not timely filed, and, alternatively, that the settlement agreement conforms to Section 8(i) and that the administrative law judge's approval of the agreement must be affirmed.

Initially, we reject employer's contention that claimant's appeal was not timely filed. The district director filed and served the administrative law judge's Decision and Order on September 7, 2000, as evidenced by the "Certificate of Filing and Service" of that date sent to the parties. *See* 20 C.F.R. §§702.349, 702.350. The Board received claimant's appeal on October 11, 2000, with a postmark date of October 5, 2000. Claimant's appeal is, therefore, timely based on the date of mailing. 20 C.F.R. §802.207(b).

We also affirm the administrative law judge's approval of the parties' settlement agreement. Section 8(i) of the Act, 33 U.S.C. §908(i)(1994), permits the parties to settle the claim for compensation, including a claim for future medical benefits. The administrative law judge must approve the settlement within 30 days of the submission for approval of a properly documented application, unless the agreement is found to be inadequate or procured by duress. 33 U.S.C. §908(i)(1); 20 C.F.R. §702.243. Section 702.242, 20 C.F.R. §702.242, implements Section 8(i), and requires that the settlement application be in the form of a stipulation signed by all parties, contain a brief summary of the facts of the case including a description of the incident, a description of the nature of the injury to include 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 and terms of settlement, information on whether or not the claimant is working or is capable of working, and a statement explaining how the settlement amount is considered adequate. If the settlement application covers medical benefits, the parties must itemize the amount paid for medical expenses by year for the three years prior to the date of the application. An estimate of the claimant's need for future medical treatment as well as an estimate of the cost of such medical treatment also must be submitted, as well as any information concerning collateral sources available for the

payment of medical expenses. 20 C.F.R. §702.242(b).

Our review of the parties' settlement agreement discloses that the regulatory requirements for a settlement agreement were fully satisfied in this case. *See generally McPherson v. National Steel & Shipbuilding Co.*, 24 BRBS 224 (1991), *aff'd on recon. en banc*, 26 BRBS 71 (1992). Claimant's challenge to the settlement on the ground that the amount for future medical benefits is inadequate is without merit. The settlement agreement reflects that claimant has incurred no medical expenses for his injuries in the calendar years 1997, 1998, 1999, and through July 2000. The agreement does not reference any specific past medical bills which are covered by the settlement. The agreement also states that the only indication of the need for further medical treatment is palliative care in the form of medication management. Finally, the agreement takes into account claimant's inability to have certain medical expenses paid under group health insurance plans or Medicare. Under such circumstances, claimant has not established that the administrative law judge erred in finding adequate the sum of \$15,000 in settlement of past and future medical benefits. *See* 20 C.F.R. §702.243(f). Moreover, claimant was represented by counsel when the agreement was signed and submitted for approval, and claimant, on appeal, has not alleged he was under duress when the agreement was reached. Thus, the administrative law judge's approval of the settlement agreement accords with law and is affirmed.

Accordingly, the administrative law judge's Decision and Order Approving Compromise Settlement is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge