BRB No. 06-0143

ALVIN SCOTT	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CERES MARINE TERMINALS, INCORPORATED	)	DATE ISSUED: 09/26/2006
	)	
	)	
Self-Insured Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Supplemental Compensation Order of Charles D. Lee, District Director, United States Department of Labor.

G. Mason White and James D. Kreyenbuhl (Brennan, Harris & Rominger, LLP), Savannah, Georgia, for self-insured employer.

Kathleen H. Kim (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Supplemental Compensation Order (Case No. 06-194014) of District Director Charles D. Lee 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). We must affirm the determinations of the district director unless the

challenging party shows them to be arbitrary, capricious, an abuse of discretion or not in accordance with law. *Jenkins v. Puerto Rico Marine, Inc.*, 36 BRBS 1 (2002).

Claimant, a truck driver, suffered injuries to his right shoulder and arm, neck, and other body parts on July 23, 2004, when the truck cab in which he was working was struck by a falling container. Following a cervical discectomy and fusion at C5 to C6-7 on July 27, 2004, claimant returned to work on October 1, 2004. Claimant, without benefit of counsel, entered into a settlement agreement with employer in which he agreed to settle all his claims for both compensation and medical benefits for $1,000.[1] The parties submitted to the district director on August 24, 2005, an Application for Approval of Agreed Settlement under Section 8(i), 33 U.S.C. §908(i).

A claims examiner contacted claimant on August 31, 2005, to ensure that he fully understood the consequences of the settlement and to confirm his decision to accept $1,000 in settlement of his claim. Claimant indicated that he was unsure about accepting the settlement. *See* Memorandum to case file dated August 31, 2005. The claims examiner thought the proposed settlement amount was inadequate and recommended that the district director disapprove the settlement agreement. *Id.* On September 7, 2005, the district director indicated he agreed with the claims examiner's recommendation. *Id.* Nonetheless, on that same day the district director's designee issued and filed a compensation order approving the agreement. Compensation Order at 3. Claimant contacted the district director's office by telephone on September 12, 2005, questioning the approval of the settlement. *See* Memorandum of telephone call dated September 12, 2005. On September 19, 2005, the district director vacated the Compensation Order of September 7, 2005, stating it had been issued in error. Supplemental Compensation Order, dated September 19, 2005.

Employer appeals the district director's Supplemental Compensation Order, arguing that the district director is without legal authority to vacate the Compensation Order approving the settlement The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the district director's supplemental order. Claimant, who is without legal representation, has not responded.

[1] At this time, claimant also agreed to settle his Georgia State Workers' Compensation Act claims for $1,000.

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. The Act states that the district director or administrative law judge "shall approve the settlement . . . unless it is found to be inadequate or procured by duress." 33 U.S.C. §908(i)(1). Where, as in the instant case, claimant is not represented by counsel, employer's liability is not discharged until the settlement is specifically approved by the district director or administrative law judge.[2]

We reject employer's contention and affirm the order vacating the approval of the settlement agreement. An order issued by the district director acting on a settlement agreement is a compensation order within the meaning of Section 21(a), 33 U.S.C. §921(a), and therefore is effective when filed in the office of the district director unless proceedings for its suspension or setting aside are instituted within the time frames established by the Act and its regulations. *See generally Downs v. Director, OWCP*, 803 F.2d 193, 19 BRBS 36(CRT) (5th Cir. 1986). On September 7, 2005, the district director issued a compensation order approving the parties' settlement agreement. The Act provides that an appeal of a compensation order may be filed within 30 days of the date the order is filed. 33 U.S.C. §921(a). The regulations governing appeals to the Board provide that the time for filing an appeal is tolled when a timely motion for reconsideration has been filed, *i.e.,* one that that has been filed within 10 days, excluding intervening weekends and holidays, of the date the order was filed. 20 C.F.R. §802.206(a), (b), (f); *Galle v. Director, OWCP*, 246 F.3d 440, 35 BRBS 17(CRT) (5th Cir.), *cert. denied*, 534 U.S. 1002 (2001).

In this case, claimant contacted the office of the district director by telephone on September 12, 2005, questioning the approval of the settlement in view of the claims examiner's previous communication with him. The substance of claimant's phone call was memorialized in writing. In essence, claimant requested reconsideration of the order approving the settlement within 10 days of the date the order was filed. *See Fireman's Fund Ins. Co. v. Bergeron*, 493 F.2d 545 (5th Cir. 1974); *McKinney v. O'Leary*, 460 F.2d 371 (9th Cir. 1972). Moreover, the district director had the authority to reconsider his order *sua sponte* within the 10-day period. The Eleventh Circuit, within whose

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[2] In this regard, the Act states,

> *If the parties to the settlement are represented by counsel*, then agreements shall be deemed approved unless specifically disapproved within thirty days after submission for approval.

33 U.S.C. §908(i)(1). As claimant was not represented by counsel, this provision is not applicable.

jurisdiction this case arises, has held that a district court may *sua sponte* reconsider its decision, pursuant to Federal Rule of Civil Procedure 59(e).[3] *Burnam v. Amoco Container Co.*, 738 F.2d 1230 (11th Cir. 1984). The Order vacating the settlement was filed on September 19, 2005, within the period allowed for a motion for reconsideration under the Act. *Galle*, 246 F.3d 440, 35 BRBS 17(CRT); 20 C.F.R. §802.206(b). As a timely motion for reconsideration was filed, we reject employer's contention that the order approving the settlement had become final. The fact that employer paid the amount due pursuant to the settlement agreement does not alter this result, as this case is no different than any case in which an award is due under the terms of a compensation order. 33 U.S.C. §914(f); *McCrady v. Stevedoring Services of America*, 23 BRBS 106 (1989) (timely motion for reconsideration does not toll the ten-day period for paying benefits pursuant to an award).

Employer's reliance upon *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), similarly is misplaced. In *Porter*, claimant attempted to rescind a settlement agreement after it had been approved and the time for reconsideration and appeal had expired. Moreover, the Board noted that settlement agreements are not subject to modification pursuant to Section 22 of the Act, 33 U.S.C. §922. *Porter*, 31 BRBS 113-114. In this case, the Order approving the settlement was subject to timely reconsideration, and the district director's reconsideration was timely. As the Order was not final, *Porter* is not applicable.[4]

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[3] Rule 59(e) states:

> Motion to Alter or Amend Judgment**.** Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

Prior to the enactment of 20 C.F.R. §802.206(b), the Board had held that motions for reconsideration were governed by the 10-day period provided by Rule 59(e). *General Dynamics Corp. v. Hines*, 1 BRBS 3 (1974).

[4] The Board stated in *Porter* that a claimant may not unilaterally rescind a settlement agreement after it has been approved, contrasting that situation with claimant's right to unilaterally rescind an agreement before approval. *See Oceanic Butler, Inc. v. Nordahl*, 842 F.2d 773, 21 BRBS 33(CRT) (5th Cir. 1988); *Rogers v. Hawaii Stevedores Inc.*, 37 BRBS 33 (2003). Given our holding in this case, we need not address whether the reservations about the settlement expressed by claimant to the claims examiner constitutes a rescission of the agreement prior to its approval.

Additionally, we reject employer's contention that there is no basis for the district director's order vacating the approval of the settlement because he did not find the proposed settlement agreement either inadequate or procured by duress. The Supplemental Order did not in itself disapprove the proposed agreement; it served only to vacate the unintended approval of the settlement application.

Accordingly, the district director's Supplemental Compensation Order vacating the approval of the settlement is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge