

HAROLD LADAY )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 PACIFIC CRANE MAINTENANCE )  
 COMPANY )  
 )  
 and )  
 )  
 SIGNAL MUTUAL INDEMNITY ) DATE ISSUED: 09/17/2013  
 ASSOCIATION )  
 )  
 Employer/Carrier- )  
 Respondents )  
 )  
 ILWU-PMA WELFARE PLAN )  
 )  
 Intervenor ) ORDER

Claimant, without counsel, filed on April 15, 2013 a “petition for reconsideration” with the Board of the Amended Decision and Order Approving Settlement (2013-LHC-00143, 00616, 00617) of Administrative Law Judge Richard M. Clark issued on a claim filed pursuant to the Longshore and Harbor Workers’ Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). The Board construed this filing as a timely notice of appeal of the administrative law judge’s decision, which was filed by the district director on March 28, 2013. 33 U.S.C. §921; 20 C.F.R. §802.205. Employer has filed several pleadings in response to claimant’s appeal, to which claimant has replied.

The administrative law judge approved the parties’ settlement pursuant to Section 8(i) of the Act, 33 U.S.C. §908(i). The administrative law judge found that claimant, who was represented by counsel, had adequate opportunity to review the proposed agreement. Claimant made changes to the agreement, to which the other parties agreed. In an addendum to the agreement, the parties agreed that employer would pay claimant four monthly payments of \$500, followed by a lump sum of the remainder of the proceeds in the fourth month. The administrative law judge found that the agreement was reasonable, adequate, and not procured by duress. Thus, the administrative law judge approved the settlement for \$250,000 payable to claimant, \$35,000 payable to

claimant's counsel, and \$21,500 payable to the ILWU-PMA Welfare Plan to satisfy its lien. Future medical benefits were left open.

The exact nature of claimant's dissatisfaction with the settlement cannot be discerned, though it appears he is unhappy with the payment schedule and desires to have the proceeds paid to him over a longer period of time. In its June 5, 2013 responsive pleading, employer requested that the Board remand the case to the administrative law judge for the issuance of a modified order extending the dates on which the settlement proceeds are to be paid. Employer stated, however, that it would not agree to other modifications to the settlement. In a July 26, 2013, pleading, employer moved to dismiss claimant's appeal on the ground that it has paid to claimant's attorney all settlement proceeds in accordance with the approved agreement.<sup>1</sup> Claimant subsequently informed the Board that he returned the settlement checks to employer.

We dismiss claimant's appeal and remand the case to the administrative law judge to address claimant's concerns about the settlement agreement. We note there is a strong policy favoring the finality of settlements, and that a claimant cannot unilaterally rescind an approved settlement. See *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);<sup>2</sup> 33 U.S.C. §922. Nonetheless, the administrative law judge is in the better position to ascertain the basis for claimant's dissatisfaction and to rule on any relief to which he may be entitled. Thus, the parties should present their contentions to the administrative law judge.<sup>3</sup>

---

<sup>1</sup>Employer notes that on July 11 and 18, 2013, the parties held conference calls with the administrative law judge. The administrative law judge stated he did not have jurisdiction to modify the settlement agreement while the appeal was pending with the Board.

<sup>2</sup>Unlike *Porter*, claimant in this case filed a document with the Board that was construed as a timely notice of appeal. Thus, claimant's challenge to the settlement is properly before the Board. See *Jeschke v. Jones Stevedoring Co.*, 36 BRBS 35 (2002); *Diggles v. Bethlehem Steel Corp.*, 32 BRBS 79 (1988) (a party cannot collaterally attack a settlement in a later proceeding).

<sup>3</sup>On July 23, 2013, the Board issued an order returning documents to claimant and informing him that he could file a motion for modification with the district director if he has evidence of a change in condition or a mistake in fact. In view of our decision herein remanding the case to the administrative law judge to address claimant's concerns, the Board's order with respect to modification is in error and should be disregarded.

Accordingly, claimant's appeal is dismissed. The case is remanded to the administrative law judge.

SO ORDERED.

---

NANCY S. DOLDER, Chief  
Administrative Appeals Judge

---

ROY P. SMITH  
Administrative Appeals Judge

---

BETTY JEAN HALL  
Administrative Appeals Judge