



BRB No. 16-0203

DANIEL PATILLO)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
HOUSTON SHIP, INCORPORATED)	DATE ISSUED: <u>Sept. 13, 2016</u>
)	
Employer)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT)	
OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Order of Dismissal of William Dorsey, Administrative Law Judge, United States Department of Labor.

Daniel Patillo, Newport, Oregon, *pro se*.

Jeffrey S. Goldberg (M. Patricia Smith, Solicitor of Labor; Maia Fisher, Acting Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, BOGGS, BUZZARD, Administrative Appeals Judges.

PER CURIAM:

Claimant, without representation, appeals the Order of Dismissal (2015-LHC-00640) of Administrative Law Judge William Dorsey 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 claimant without representation, the Board will review the administrative law judge's decision to determine if the findings of fact and conclusions of law are rational, supported by

substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). If they are, they must be affirmed.

Claimant was injured in 1988 while working for employer over navigable waters in Portland, Oregon. Employer was uninsured, and it filed for bankruptcy in 1992. In 1995, claimant was awarded permanent total disability benefits and medical benefits. Employer and its officers defaulted on payment of benefits in their personal capacities. *See* 33 U.S.C. §938. Beginning in 1998, the Secretary of Labor, through his designee, the Director, Office of Workers’ Compensation Programs (the Director), exercised the discretion afforded under Section 18(b) of the Act, 33 U.S.C. §918(b), to pay claimant’s benefits from the Special Fund. *See* 33 U.S.C. §944.

Claimant subsequently sought increased disability compensation and specific medical benefits. Claimant also claimed he had been discriminated against in violation of 33 U.S.C. §948a. These claims were denied. *See Patillo v. Director, OWCP*, BRB No. 01-0570 (Mar. 21, 2002); *Patillo v. Director, OWCP*, 2000-LHC-00237 (Dec. 8, 2003) (ALJ decision on remand). In 2010, the Director obtained an independent medical evaluation, and the examining neurologist opined that claimant was capable of working. In light of this opinion, the Director and claimant, who was then represented by counsel, reached a Section 8(i), 33 U.S.C. §908(i), settlement agreement whereby the Special Fund agreed to pay claimant a lump sum of \$140,000 in disability benefits, thus discharging the Special Fund’s liability for any further disability benefits. Medical benefits remained open, and the Special Fund agreed to pay reasonable and necessary medical expenses related to the 1988 work injury. Administrative Law Judge Calianos issued a Decision and Order Approving Settlement dated November 25, 2011, finding that the settlement was adequate and not procured under duress. *See* 20 C.F.R. §702.243.

In 2014, claimant, now without counsel, requested a hearing before an administrative law judge and submitted documents the Director interpreted as an offer to settle the issue of claimant’s entitlement to future medical benefits. The “offer” claimant proposed would require the Special Fund to pay claimant \$2,356,629.60 for his lifetime future medical care. The Director declined the proposal and filed a motion for summary decision with the administrative law judge. The administrative law judge granted the Director’s motion and dismissed the claim, stating that he lacks authority to order the Special Fund to agree to a settlement. Claimant filed this appeal, and the Director responds, urging affirmance of the dismissal of the claim.

The administrative law judge correctly found that he does not have the authority to order the Director to agree to a settlement as proposed by claimant. First, the Act specifically requires the agreement of all parties to a settlement. *See Stovall v. Total Terminals Int’l, LLC*, 49 BRBS 1 (2015). Section 8(i)(1) provides in pertinent part:

Whenever the parties to any claim for compensation under this chapter, including survivors benefits, *agree to a settlement*, the [district director] or administrative law judge shall approve the settlement within thirty days unless it is found to be inadequate or procured by duress.

33 U.S.C. §908(i)(1) (emphasis added); *see generally Rogers v. Hawaii Stevedores, Inc.*, 37 BRBS 33 (2003).

Moreover, the Act provides, in light of an employer's insolvency, that a claimant's benefits may be paid from the Special Fund pursuant to Section 18(b) of the Act, 33 U.S.C. §918(b). Section 18(b) states in pertinent part:

In cases where judgment cannot be satisfied by reason of the employer's insolvency or other circumstances precluding payment, the Secretary of Labor *may, in his discretion and to the extent he shall determine advisable* after consideration of current commitments payable from the special fund established in section 944 of this title, make payment from such fund upon any award made under this chapter, and in addition, provide any necessary medical, surgical, and other treatment required by section 907 of this title in any case of disability where there has been a default in furnishing medical treatment by reason of the insolvency of the employer.

33 U.S.C. §918(b) (emphasis added); 20 C.F.R. §702.145(f). The Director is the Secretary's authorized representative. 20 C.F.R. §701.301(a)(2). In light of employer's bankruptcy in this case, the Director exercised his discretion to pay claimant's disability benefits from the Special Fund and to settle the disability claim, the proceeds of which also were paid by the Special Fund. 20 C.F.R. §702.145(f). The Director also agreed to pay medical benefits that are reasonable and necessary for the treatment of claimant's work-related injury. *See Meagher v. B.S. Costello, Inc.*, 20 BRBS 151 (1987), *aff'd*, 867 F.2d 722, 22 BRBS 24(CRT) (1st Cir. 1989); *see also Weber v. S.C. Loveland Co.*, 35 BRBS 190 (2002), *aff'g and modifying on recon.*, 35 BRBS 75 (2001). It also is within the Director's discretion to accept or decline a settlement offer that affects payments by the Special Fund pursuant to Section 18(b). Here, the Director has declined the "offer" to settle the claim for medical benefits.

The administrative law judge cannot order the Director to settle any claim. Therefore, we affirm the administrative law judge's decision granting the Director's motion for summary decision and dismissing claimant's claim.¹

¹ The ruling by the administrative law judge, and thus the matter on appeal before the Board, relates solely to claimant's request for a lump sum settlement for his medical expenses. To the extent claimant contends he requires additional medical treatment for his work-related injuries, he should contact the district director's office. 20 C.F.R.

Accordingly, the administrative law judge's Order of Dismissal is affirmed.²

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

§702.407.

² Claimant's former counsel performed work for claimant between 2010 and 2015 and offered to represent him in his appeal to the Board. Claimant refused the assistance. Counsel filed with the Board a "charging lien" for an attorney's fee to be paid by the Special Fund. We deny this petition as the Special Fund cannot be held liable for an attorney's fee. *Holliday v. Todd Shipyards Corp.*, 654 F.2d 415, 13 BRBS 741 (5th Cir. 1981); *Director, OWCP v. Robertson*, 625 F.2d 873, 12 BRBS 550 (9th Cir. 1980).