U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 19-0333

JOHN N. WOODS	)	
	)	
Claimant-Petitioner	)	
	)	DATE ISSUED: 09/18/2019
v.	)	
	)	
HARRY PEPPER & ASSOCIATES, INCORPORATED	)	
	)	
	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Order on Cross Motions for Summary Decision and the Order on Motion for Reconsideration of Patrick M. Rosenow, Administrative Law Judge, United States Department of Labor.

John N. Woods, Fort Deposit, Alabama.

Blake J. Hood (Boyd & Jenerette, P.A.), Jacksonville, Florida, for employer.

Before: BUZZARD, ROLFE and GRESH, Administrative Appeals Judges.

PER CURIAM:

Claimant, appearing without counsel, appeals the Order On Cross Motions for Summary Decision and the Order on Motion for Reconsideration (2018-LHC-584) of Administrative Law Judge Patrick M. Rosenow rendered on a claim filed pursuant to 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 legal representation, we will review the administrative law judge's findings of fact and conclusions of law to determine if they are rational, supported by substantial evidence, and 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).

This case arises from a back injury claimant suffered at work on September 11, 2009. Claimant, represented by counsel at the time, reached a settlement agreement with employer, wherein employer agreed to pay $37,495 in compensation benefits and $37,495 in medical benefits.[1] EX 3.[2] The settlement agreement states that claimant agreed to relinquish any and all rights under the Act for his work injury on September 11, 2009, and that employer's liability is fully discharged. *Id.* at 3, 6. It further states that claimant entered into the settlement of his own free will. *Id.* at 7. Claimant signed the settlement on August 30, 2010. In addition to the settlement agreement, claimant also signed a document on August 30, 2010, in which he released employer from any and all claims for his work injury and accepted $10 in consideration for the release. This amount was added to the settlement sum for a total of $75,000. EX 4.

The district director approved the settlement agreement in an order dated September 28, 2010. EX 8. Thereafter, on October 1, 2010, employer sent claimant a check for $75,000. EX 9.

More than four years later, now without the assistance of counsel, claimant contacted the Office of Workers' Compensation Programs (OWCP), challenging the settlement as invalid for being signed under duress and for containing false information. The OWCP told claimant that his challenge to the settlement's validity was untimely as it had not been filed within 30 days of the settlement's approval. Claimant appealed to the Board, which dismissed the appeal because it was of a nonfinal decision or order. *Woods v. Harry Pepper & Assoc., Inc.*, BRB No. 15-0244 (June 23, 2015) (unpub.). The Board remanded the case to the district director to investigate claimant's allegations of fraud.

Claimant thereafter filed a pre-hearing statement with the OWCP, again alleging that the settlement was obtained by fraud and requesting a formal hearing. The request was referred to the Office of Administrative Law Judges (OALJ). While the matter was pending at the OALJ, claimant also filed an appeal of the Board's order with the United States Court of Appeals for the Eleventh Circuit. Claimant then filed a motion to withdraw his claim with the OALJ because of the pending appeal. On October 18, 2015, an administrative law judge issued an Order Granting Withdrawal of the Claim and Dismissing Claim. EX 16. On January 14, 2016, the Eleventh Circuit dismissed claimant's appeal.

[1] Claimant also sought and received benefits under Florida's state workers' compensation program.

[2] The cited exhibits are attached to employer's motion for summary decision.

On April 22, 2016, claimant again contacted the OWCP, seeking modification of the settlement and asserting for the first time that he never cashed the $75,000 settlement check. Employer objected and introduced evidence that claimant received and cashed the check. On November 3, 2017, the district director rejected claimant's contentions, finding no evidence that claimant signed the settlement agreement under duress. She therefore found that the settlement is final. EX 23.

Claimant appealed the district director's order to the Board. The Board stated it did not have jurisdiction to review the district director's finding that the settlement was not fraudulently procured because claimant's case had been referred to the OALJ. The Board therefore dismissed claimant's appeal. *Woods v. Harry Pepper & Assoc., Inc.*, BRB No. 18-0126 (Mar. 7, 2018) (unpub.).

Before the administrative law judge, employer filed a motion for summary decision seeking to dismiss claimant's claim and motion to vacate the settlement. Claimant filed a cross-motion for summary decision and an affidavit in which he acknowledged that he did cash the $75,000 check but stated that he did so out of "financial duress." The administrative law judge found the settlement documents met the regulatory requirements and the agreement between claimant and employer was valid under Section 8(i), 33 U.S.C. §908(i). The administrative law judge concluded that the settlement was not subject to modification and claimant did not timely raise any challenge to the validity of the settlement. The administrative law judge therefore denied claimant's motion for summary decision and granted employer's motion for summary decision.

Claimant filed a motion for reconsideration of the administrative law judge's Order on Cross Motions for Summary Decisions, which employer opposed. The administrative law judge denied the motion for reconsideration.

Claimant appeals to the Board. Employer filed a response, urging affirmance of the administrative law judge's decision. Claimant filed a reply brief.

In ruling on a motion for summary decision, the administrative law judge must view all facts in the light most favorable to the non-moving party and determine if there are any genuine issues of material fact in dispute and if the moving party is entitled to a decision in its favor as a matter of law. *Morgan v. Cascade General, Inc.*, 40 BRBS 9 (2006); 29 C.F.R. §18.72. Section 8(i) of the Act, 33 U.S.C. §908(i), governs settlements of claims. A settlement agreement is deemed approved within 30 days of its submission unless it is inadequate, procured by duress, or not in conformance with the regulatory criteria. 33 U.S.C. §908(i)(1); 20 C.F.R. §§702.241-702.243. Once a settlement is approved and the time for appeal has expired, it is binding and is not subject to rescission by any party. *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*, 196 F.3d 484 (9th Cir.) (table), *cert. denied*, 528 U.S. 1052 (1999). Section 22 of the Act, 33 U.S.C. §922, which governs modification of claims, specifically states that it does not authorize the modification of settlements.

The administrative law judge found the agreement constituted a valid settlement under Section 8(i) of the Act. He noted the district director approved it and the document clearly states that employer's obligations were fully discharged in exchange for payment of the agreed-upon sum. The administrative law judge concluded the settlement was final and could not be set aside or rescinded.

We affirm the administrative law judge's conclusion. Approved settlement agreements not timely appealed are final and binding and not subject to rescission or modification. *See* 33 U.S.C. §922; *Porter*, 31 BRBS at 113. The settlement agreement contains the information 20 C.F.R. §702.242 requires, providing the facts concerning the injury, stating the compensation rate, and itemizing the amounts to be paid for compensation and medical benefits. Moreover, any challenge claimant might make to the validity of the settlement application is untimely, as he did not challenge it within 30 days of the date the settlement was approved. We reject any suggestion the settlement agreement is incomplete because it did not refer to or include the separate Release in which claimant agreed to release any and all claims against employer in exchange for the additional sum of $10. There is no dispute that the parties followed the requisite procedures under Section 8(i) to settle claimant's claim against employer for the payment of the agreed-upon sum. *See Norton v. National Steel & Shipbuilding Co.*, 25 BRBS 79 (1991), *aff'd on recon. en banc*, 27 BRBS 33 (1993) (Brown, J., dissenting). The Release was not necessary to effectuate the settlement, because a properly approved settlement releases employer from further liability under the Act as a matter of law.[3] Moreover, the settlement itself states claimant relinquished all rights under the Act against employer and that employer's liability under the Act was fully discharged upon approval of the settlement and payment of the proceeds. EX 3 at 3, 6.

We further reject claimant's assertion that the settlement should be rescinded on the basis of fraud or duress. *Cf. Downs v. Texas Star Shipping Co., Inc.*, 18 BRBS 37, *aff'd sub nom. Downs v. Director, OWCP*, 803 F.2d 193, 19 BRBS 36(CRT) (5th Cir. 1986) (suggesting that a final settlement may be set aside if a party establishes it was fraudulently secured). The settlement agreement states claimant signed it of his own free will. The district director previously investigated claimant's allegations of fraud and duress and

[3] Section 8(i)(3) states in pertinent part, "A settlement approved under this section shall discharge the liability of the employer or carrier, or both." 33 U.S.C. §908(i)(3).

found no evidence it was procured through improper means. EX 23. In addition, claimant's allegations of fraud or duress are unsubstantiated by any evidence. "[T]he plaintiff must present affirmative evidence in order to defeat a properly supported motion for summary [decision]." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986). The administrative law judge properly found claimant offered no evidence to create a genuine issue of material fact to support his own motion for summary decision or to defeat employer's motion. The administrative law judge also concluded that claimant is estopped from obtaining an equitable remedy because of his delay in raising the issue and his own objectionable behavior in attempting to deny that he had received the settlement payment. As claimant did not offer evidence of fraud or duress, we affirm the administrative law judge's grant of summary decision to employer. 29 C.F.R. §18.72; *Buck v. General Dynamics Corp./Electric Boat Div.*, 37 BRBS 53 (2003).

Accordingly, the administrative law judge's Order on Cross Motions for Summary Decision and Order on Motion for Reconsideration are affirmed.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge