

BRB No. 91-1065

MARCELLE JAMES	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ALABAMA DRY DOCK AND	)	
SHIPBUILDING CORPORATION	)	DATE ISSUED:
	)	
and	)	
	)	
THE TRAVELERS INSURANCE	)	
COMPANY	)	
	)	
Employer/Carrier-	)	
Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS,	)	
UNITED STATES DEPARTMENT	)	
OF LABOR	)	
	)	
Petitioner	)	DECISION and ORDER

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

Mark Reinalter (Thomas S. Williamson, Jr., Solicitor of Labor; Carol DeDeo, Associate  
Solicitor; Janet R. Dunlop, Counsel for Longshore), Washington, D.C., for the  
Director, Office of Workers' Compensation Programs, United States Department of  
Labor.

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

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director), appeals the Decision and Order Approving Compromise Settlement (89-LHC-3603) 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). We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by

substantial evidence, are rational, and are in accordance with applicable law. *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant worked as a crane fireman for employer from 1975 to 1985. In October 1988, claimant filed a claim for a 31.6 percent binaural impairment based on a September 24, 1988, audiogram. Claimant contended his injury was caused by exposure to repeated noise during his employment with employer. A June 23, 1989, audiometric examination performed by clinical audiologist Judith B. Huffman revealed a 4.375 percent binaural hearing loss. An October 20, 1989, audiometric examination administered by Jim D. McDill, Ph.D., revealed a 3.4 percent binaural impairment. The case was referred to the Office of Administrative Law Judges for a formal hearing on August 22, 1989.

After the case was referred to the Office of Administrative Law Judges, claimant and employer reached a compromise settlement that provided for a lump sum payment to claimant of \$4,000 for any injury or disability which claimant may have sustained due to noise exposure while employed by employer. The agreement further provided that claimant was entitled to \$1,000 for past, present, and future medical expenses, and an attorney's fee of \$2,000 payable to claimant's counsel. Claimant and employer then requested approval of the settlement by the administrative law judge pursuant to Section 8(i) of the Act. 33 U.S.C. §908(i). Incorporating the parties' agreement into his Decision and Order, the administrative law judge approved the settlement, finding it to be in claimant's best interest, adequate, and not procured by duress.

On appeal, the Director challenges the administrative law judge's approval of the parties' settlement agreement, contending that it arguably discharges employer's potential liability for death benefits, a claim not yet in existence, in violation of Section 8(i) of the Act and Section 702.241(g), 20 C.F.R. §702.241(g), of the regulations. Neither the employer nor the claimant has responded to this appeal.

Specifically, the Director challenges the language contained in paragraph 4 of the Petition to Approve Compromise Settlement which the administrative law judge incorporated into his Decision and Order Approving Compromise Settlement at 2 which provides:

This payment is made and received with the full understanding that such payment covers any and all disability, death benefits, penalties, interest and any other costs of every kind, including all back compensation payments, if any, and all claims based on loss of wage-earning capacity, if any, arising from the injury heretofore described.

The Director maintains that this language violates the provisions of Section 8(i) of the Act and Section 702.241(g) of the regulations because it arguably discharges the rights of claimant's survivors to death benefits which could arise from the injury.

We reject the Director's contentions. The Board has previously rejected the argument that a reference to death benefits in a settlement of a hearing loss claim renders the settlement invalid, noting that it is highly unlikely that an occupational hearing loss will result in a compensable death benefits claim. *Dickinson v. Alabama Dry Dock & Shipbuilding Corp.*, 28 BRBS 84 (1993); *Kelly v. Ingalls Shipbuilding, Inc.*, 27 BRBS 117 (1993). In this case, as in *Dickinson* and *Kelly*, it is clear from the agreement as a whole that it is limited to the hearing loss described in the settlement agreement. Therefore, the agreement does not violate Section 8(i) or 20 C.F.R. §702.241(g).

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

SO ORDERED.

ROY P. SMITH  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge