U.S. Department of Labor

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

BRB No. 20-0181

CHRISTOPHER KASULE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
TRIPLE CANOPY, INCORPORATED	)	
	)	DATE ISSUED: 08/20/2020
and	)	
	)	
CONTINENTAL CASUALTY COMPANY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Compensation Order Approval of Agreed Settlement – Section 8(i) of David Groeneveld, District Director, United States Department of Labor.

Christopher Kasule, Kampala, Uganda.

Before: BOGGS, Chief Administrative Appeals Judge, GRESH and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals District Director David Groeneveld's Compensation Order Approval of Agreed Settlement – Section 8(i) (Case No. 02-201979) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq*., as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (Act). In an appeal by a claimant without the assistance of counsel, the Board will review the district director's findings; the Board must affirm those findings unless they are shown to be arbitrary, capricious, based on an abuse of discretion,

or not in accordance with applicable law. *See Jenkins v. Puerto Rico Marine*, 36 BRBS 1 (2002); *Sans v. Todd Shipyards Corp.*, 19 BRBS 24 (1986).

Claimant, a resident of Uganda, was employed as a security guard by Employer in Iraq when, on August 2, 2009, he was struck on his right eye by a support pole. As a result of this incident, Claimant sought treatment for, among other things, blurred vision, itching and swollen eyes, and headaches. On December 17, 2009, Claimant resigned his position and returned to Uganda for medical treatment. He was diagnosed with right eye pterygium, and solar maculopathy and conjunctivitis in both eyes.

Claimant subsequently filed a claim for benefits under the Act, asserting he underwent eye surgery on August 13, 2013, and his treating physician opined he sustained a 50 percent permanent disability to his eyes. Claimant additionally sought benefits for conditions which he alleged resulted from his exposure to carbon monoxide gas while working for employer.[1]

In a Decision and Order Awarding Benefits issued on July 31, 2015, Administrative Law Judge Paul R. Almanza (administrative law judge) found Claimant's eye injuries were compensable, but no medical evidence existed to support Claimant's assertion he sustained additional work-related injuries due to exposures. The administrative law judge awarded Claimant temporary total disability benefits from January 11, 2010, through August 18, 2013, and 160 weeks of permanent partial disability benefits thereafter for a 50 percent impairment to each eye,[2] and ongoing medicals benefits. 33 U.S.C. §§908(b), (c)(5); 907.

Claimant appealed the administrative law judge's decision to the Benefits Review Board. The Board dismissed Claimant's appeal, finding it was untimely filed, but remanded the case to the district director to initiate modification proceedings pursuant to Claimant's motion. *Kasule v. Triple Canopy, Inc.*, BRB No. 16-0322 (Nov. 17, 2016).

On March 18, 2019, the administrative law judge issued a Decision and Order Denying Modification as he found Claimant's evidence did not warrant modification of the denial of his exposure claims. Assuming, arguendo, Claimant had established grounds for modification, the administrative law judge concluded the request for modification would

[1] These conditions included headaches, dizziness, weakness, chest pains, respiratory difficulties and an irregular heartbeat.

[2] Claimant's permanent partial disability benefits were based on an average weekly wage $128.33.

fail on the merits because Claimant did not establish he injured anything other than his eyes or that he is disabled.

Claimant, without the benefit of counsel, appealed the administrative law judge's decision denying modification to the Board. BRB No. 19-0378. While this appeal was pending, Claimant retained the services of KNA Pearl, a Maryland-based law firm.

Claimant then moved the Board to remand his case to the district director for consideration of the parties' settlement agreement. *See* 33 U.S.C. §908(i). The Board granted the motion, dismissed Claimant's appeal without prejudice, and remanded the case to the district director. *Kasule v. Triple Canopy, Inc.*, BRB No. 19-0378 (Nov. 20, 2019).

Claimant was represented by KNA Pearl in the settlement proceedings. On December 10, 2019, the district director issued a Compensation Order Approval of Agreed Settlement – Section 8(i). Pursuant to the parties' settlement agreement, employer agreed to pay $45,400 in compensation, $5,000 in medical benefits, and $15,000 in an attorney's fee directly to KNA Pearl.[3] Claimant acknowledges the agreed upon sums due him were deposited into his bank account on December 17, 2019. *See* 33 U.S.C. §914(f).

In a letter to the Board dated December 20, 2019, Claimant, again without counsel, appealed the district director's approval of the parties' settlement agreement. BRB No. 20-0181. Employer has not filed a response to Claimant's appeal.

Claimant contends the settlement amount is not adequate and he agreed to it under duress. He avers the amount is less than the amount provided in an August 11, 2017 commutation table and he accepted it because he owes money for medical bills and to "money lenders." Claimant further contends his attorney and a Ugandan firm, Hollyne Care Uganda, improperly took a portion of his settlement proceeds and Employer improperly paid a fee to his attorney in excess of the agreed amount.

Section 8(i), 33 U.S.C. §908(i), provides for the settlement of a claim for compensation under the Act. If a claimant is represented by counsel, a settlement agreement must be approved within thirty days unless it is found to be inadequate or procured by duress. 33 U.S.C. §908(i)(1);[4] *see Richardson v. Huntington Ingalls, Inc.*, 48

[3] In addition the agreement stated KNA Pearl would satisfy the attorney's fee claim of claimant's Ugandan attorney, Joseph Wandega, out of the $15,000 fee employer paid.

[4] Section 8(i)(1) provides:

BRBS 23 (2014); 20 C.F.R. §702.241(d). Once approved, the effect of a settlement is to completely discharge the employer's liability for the claimant's injury. 33 U.S.C. §908(i)(3); 20 C.F.R. §702.243. The regulations require the parties provide certain documentation to ensure the approving official has the information necessary to determine whether the settlement is inadequate or procured by duress. *McPherson v. National Steel & Shipbuilding Co.*, 26 BRBS 71 (1992), *aff'g on recon. en banc* 24 BRBS 224 (1991); 20 C.F.R. §§702.241 - 702.243.

The parties' settlement application explained:

> The parties recognize that there are issues in dispute and wish to avoid the hazards, delays, and costs of further litigation by an agreed settlement under §8(i) of the Act with the following terms:
>
> > The Employer/Carrier will pay Claimant a lump sum of $50,400.00 representing:
> >
> > *Indemnity – Commutation value of future PTD benefit of $45,400.00*
> >
> > *Past and future medical benefits of $5,000.00.*
>
> ***
>
> The proposed settlement agreement represents a compromise of the issues and extent of the injuries [and] medical care and is intended to be a full, final and complete settlement of any and all issues arising from said accident.
>
> ***

Whenever the parties to any claim for compensation under this chapter, including survivors benefits, agree to a settlement, the deputy commissioner or administrative law judge shall approve the settlement within thirty days unless it is found to be inadequate or procured by duress. Such settlement may include future medical benefits if the parties so agree. No liability of any employer, carrier, or both for medical, disability, or death benefits shall be discharged unless the application for settlement is approved by the deputy commissioner or administrative law judge. 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.

> Based on the disputed issues discussed above, the parties agree that the proposed settlement is adequate to compensate the claimant for the effects of the industrial injuries. Claimant further stipulates that the settlement is not obtained under duress.

Settlement App. at 4 – 5 (italics in original). The district director found the proposed settlement adequate and not procured by duress; thus, he approved it.

We reject Claimant's contention that the amount of the settlement is inadequate in view of the commutation table. Claimant has attached to his appeal a Commutation Disability Calculator computation, which indicates the commutation value of this claim on August 11, 2017, was $37,992.37. As this amount, if accurate, is less than the sum Claimant received in settlement of his claim for benefits under the Act, his reliance on this calculation to establish the inadequacy of the settlement is misplaced. Moreover, at the time of the settlement, Employer had paid all disability benefits due Claimant pursuant to the administrative law judge's July 31, 2015 Decision and Order, and Claimant had received no medical benefits since 2017. *See* Settlement App. at 5. Thus, on its face, the settlement application appears to be adequate. Moreover, that Claimant feels the settlement is inadequate in view of his debts is not relevant to the adequacy of the settlement. In a settlement agreement, the parties are compromising their positions, and the adequacy of the settlement is to be determined in view of the regulatory criteria concerning claimant's alleged work injuries and in consideration of the fact that claimant could receive nothing if his claims were adjudicated on the merits.[5] *See Richardson*, 48 BRBS 23. Therefore, on the four corners of the settlement application, we affirm the district's director's approval of the settlement agreement.

However, Claimant also avers impropriety based on Employer's LS-208 Form, dated December 10, 2019, which may indicate Employer paid Claimant's counsel an attorney's fee greater than the amount set forth in the approved settlement agreement. Claimant further alleges impropriety in the fee arrangement his Maryland attorney had with Hollyne Care Uganda.

[5] In this regard, the regulations state that a review of a settlement application must consider all of the circumstances, including where appropriate, the probability of success, in determining whether the settlement amount is adequate. The criteria for determining adequacy should include, but not be limited to, the claimant's age, education and work history, the degree of claimant's disability or impairment, and the cost and necessity of future medical treatment. *See* 20 C.F.R. §702.243(f).

We agree with Claimant that these allegations require further investigation by the district director. The settlement application the parties signed and the district director approved states Employer will pay KNA Pearl the sum of $15,000 to resolve all claims for attorney's fees and costs under Section 28 of the Act, 33 U.S.C. §928. *See* Settlement App. at 4. Employer's subsequent LS-208 Notice of Payment dated December 10, 2019, however, indicates Employer paid an attorney's fee of $41,500, though to whom was not specified.

Moreover, Claimant also contends KNA Pearl inappropriately received some of his settlement proceeds through Hollyne Care Uganda. Claimant alleges he signed a Memorandum of Understanding (MOU) with Hollyne Care Uganda in order for KNA Pearl to represent him. The MOU states that if Claimant succeeds in obtaining benefits, he would tender to Hollyne Care Uganda 30 percent of his total compensation recovery. *See* Cl. March 9, 2020 letter to the Board, pp. 11 – 13. Correspondence from KNA Pearl to Claimant dated December 18, 2019, states KNA Pearl received this 30 percent of the settlement proceeds under the terms of the MOU. In response, Claimant wrote letters challenging the legality of this payment. The MOU and KNA Pearl's receipt of funds thereunder may violate Section 28(e) of the Act, 33 U.S.C. §928(e), which prohibits the receipt of unapproved attorney's fees.[6]

We cannot discern the basis for the attorney's fee payment indicated on Employer's LS-208 Form or the relationship among Claimant, Hollyne Care Uganda, and KNA Pearl, and whether these purported financial transactions in fact occurred. However, if there is any financial impropriety, including transactions that violate Section 28(e) of the Act, the validity of the settlement could be called into question. Consequently, we remand the case to the district director to investigate Claimant's claims of impropriety. The district director may vacate the settlement agreement if he finds it inadequate or procured by duress or

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[6] Section 28(e), 33 U.S.C. §928(e), states:

> A person who receives a fee, gratuity, or other consideration on account of services rendered as a representative of a claimant, unless the consideration is approved by the deputy commissioner, administrative law judge, Board, or court, or who makes it a business to solicit employment for a lawyer, or for himself, with respect to a claim or award for compensation under this chapter, shall, upon conviction thereof, for each offense be punished by a fine of not more than $1,000 or be imprisoned for not more than one year, or both.

See also 33 U.S.C. §931(b); 20 C.F.R. §702.131(c)(4) (disqualification of attorneys who, among other things, violate Section 28(e)).

fraud based on the findings of his investigation. *See generally Downs v. Texas Star Shipping Co., Inc.*, 18 BRBS 37 (1986), *aff'd sub nom. Downs v. Director, OWCP*, 803 F.2d 193, 19 BRBS 36(CRT) (5th Cir. 1986). In addition, he may take any other action the Act or regulations permit. 33 U.S.C. §931(b); 20 C.F.R. §702.131(c)(4).

Accordingly, we affirm the district director's Compensation Order Approval of Agreed Settlement – Section 8(i) based on the plain language of the settlement application. We remand this case to the district director for consideration of the identified issues in accordance with this opinion; he may vacate the settlement or take other appropriate action in view of his findings.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge