

FRANCYNE J. COOPER)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
NORTHROP GRUMMAN)	DATE ISSUED: <u>Aug. 5, 2014</u>
SHIPBUILDING, INCORPORATED)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order and the Order Denying Claimant’s Petition for Reconsideration of Kenneth A. Krantz, Administrative Law Judge, United States Department of Labor.

Francyne J. Cooper, Newport News, Virginia, *pro se*.

Benjamin M. Mason (Mason, Mason, Walker & Hedrick, P.C.), Newport News, Virginia, for self-insured employer.

Before: HALL, Acting Chief Administrative Appeals Judge, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order and the Order Denying Claimant’s Petition for Reconsideration (2010-LHC-01657) of Administrative Law Judge Kenneth A. Krantz 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 *pro se* claimant, we will review the administrative law judge’s decision to determine if the findings of fact and conclusions of law are supported by substantial evidence, are rational, and are 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).

Claimant injured her right arm and shoulder at work on July 3, 2007. Employer paid claimant \$359.30 in temporary total disability benefits. The parties subsequently

agreed to settle claimant's claim under the Act for a lump sum payment of \$22,500.¹ The settlement also indicates that claimant and employer settled the claim she filed under the Virginia workers' compensation statute for an additional lump sum payment of \$22,500, less attorney's fees, such that claimant's net recovery under both statutes was \$36,000. EX 10. Claimant signed the Section 8(i) settlement agreement on June 16, 2008. Also on June 16, 2008, claimant signed a document called "Settlement Agreement and General Release." In that document, contemporaneously prepared and signed with the Section 8(i) settlement agreement, claimant agreed to "settle all potential and/or outstanding claims arising out of her employment with NNS." EX 8 at 1. The General Release was contingent upon approval of the two workers' compensation settlements, and it states that it was intended to release employer from liability for the claims under the two workers' compensation statutes. In exchange for additional consideration of \$50, claimant agreed to forever release employer for claims arising under nine other statutes, including Title VII of the Civil Rights Act, 42 U.S.C. §2000, and the Age Discrimination in Employment Act, 29 U.S.C. §621. EX 8. On July 16, 2008, the district director approved the Section 8(i), 33 U.S.C. §908(i), settlement as it was adequate and not procured under duress.² EX 10. The settlement agreement under the Virginia statute also was approved.

In 2009, claimant filed claims for benefits under both the Longshore and Virginia Acts, claiming an injury as of January 2009. Because she had not worked for employer since 2007, her claim was interpreted as a request to modify her 2008 Section 8(i) settlement. Decision and Order at 8; EXs 8, 10. The administrative law judge observed that a settlement under Section 8(i) is not subject to modification under Section 22 of the Act, 33 U.S.C. §922. Further, he found, even if a settlement is subject to modification due to fraud, claimant did not present evidence of fraud. Therefore, the administrative law judge denied claimant's claim. Decision and Order at 11. He subsequently denied claimant's motion for reconsideration.

Claimant, without representation, appeals the administrative law judge's decisions. She asserts that her attorney, Ms. Moring, and employer's counsel conspired to deprive her of her rights, as she did not receive the amount of benefits she thought she would; that her signature was fraudulently affixed to the settlements; and that she was deceived as to

¹ The settlement proceeds were apportioned as follows: \$15,400 to claimant for past, present, and future disability benefits; \$100 to claimant for her discrimination claim under 33 U.S.C. §948a; \$2,500 to close the claim for medical benefits; and \$4,500 for an attorney's fee. EX 10.

² The Section 8(i) settlement does not reference the Settlement Agreement and General Release.

the release of her right to pursue a claim with the EEOC. Employer responds, urging affirmance of the administrative law judge's decision, and averring that claimant was not a victim of fraud and there is no basis under the Act for re-opening her claim.

Section 22 of the Act states:

Upon his own initiative, or upon the application of any party in interest..., on the ground of a change in conditions or because of a mistake in a determination of fact by the [district director], the [district director] may, at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one year after the rejection of a claim, review a compensation case *This section does not authorize the modification of settlements.*

33 U.S.C. §922 (emphasis added). However, the Board left the suggestion that a settlement may be re-opened as a matter of equity if fraud is established. *Downs v. Texas Star Shipping Co., Inc.*, 18 BRBS 37, 39-40 (1986), *aff'd sub nom. Downs v. Director, OWCP*, 803 F.2d 193, 19 BRBS 36(CRT) (5th Cir. 1986); *see also Rochester v. George Washington University*, 30 BRBS 233 (1997). In this case, the administrative law judge extensively addressed each of claimant's arguments and determined she did not establish that the settlement agreement was procured by fraudulent means. Decision and Order at 8-11. Therefore, he declined to modify the settlement agreement. We affirm the administrative law judge's decisions.

Claimant alleges that her attorney's incorrect representation that she, claimant, was homeless during the period of the settlement negotiations and execution of the settlement somehow defrauded claimant. The administrative law judge found that, although claimant presented evidence she was not homeless at that time, her housing status had no connection to counsel's representation, and claimant did not establish how this information was used to defraud her. Decision and Order at 9; CX 1 at 19-22. Claimant also asserts she did not receive the appropriate amount of proceeds. Although the settlement agreement appears to explain the distribution of the proceeds, the administrative law judge found that claimant may not have fully understood them. That is, she may not have understood that some of the funds were to pay medical expenses and her attorney's fee. While claimant allegedly did not receive the amount of settlement proceeds she expected, the administrative law judge rationally concluded that claimant's confusion did not establish fraud or mental incapacity warranting setting aside or modifying the settlement. Decision and Order at 9.

Claimant further contends she did not sign the settlement agreements, but, rather, signed a “paper” and then her signature was “attached” to the settlement agreements. The administrative law judge found that claimant testified that she had initialed and signed the Section 8(i) settlement document. Decision and Order at 11; Tr. at 20-21. He also found that the Settlement Agreement and General Release document cautioned claimant to read the document before signing it and that claimant offered no evidence to support her allegation that her attorney had fraudulently obtained her signature and affixed it to this document to make it look as if claimant had signed it. Decision and Order at 11; EXs 8, 10.

With respect to the Settlement Agreement and General Release, claimant contends she did not intend to waive, and she did not give her attorney the authority to waive, her right to pursue claims with the EEOC against employer.³ The administrative law judge found there is no evidence to establish that claimant was unaware she was waiving her right to file or pursue an EEOC claim. Decision and Order at 10; EX 8. Indeed, he found, to the contrary, that there is evidence to establish claimant had been warned of the ramifications of the release. *See* EX 8 at 5-6; CX 1 at 61. Moreover, even if claimant’s claim of fraud were valid, there is no provision of the Longshore Act under which claimant would be entitled to relief. Although the Settlement Agreement and General Release incorporated, and was contingent upon, the prior approval of the Longshore Act compensation settlement, any potential relief under the Longshore Act can apply only to releases of claims arising under the Longshore Act. The administrative law judge and the Board are without authority to modify a settlement pertaining to the release of rights granted by other statutes, such as the Title VII of the Civil Rights Act, as it is not “in respect of” a claim under the Longshore Act. 33 U.S.C. §919(c); *Temporary*

³ Claimant had filed claims of gender and racial discrimination with the EEOC against employer in July 2007 and June 2008. CX 1 at 69-70. The settlement agreements were signed only one week after the second filing with the EEOC. Claimant asserts that employer back-dated documents concerning claimant’s release from employment in order to protect itself against these discrimination claims. Claimant’s employment was terminated sometime before October 2007, when claimant learned of the termination; employer averred claimant had failed to provide medical documentation of her disability as requested. *See* CX 1 at 11, 27. The administrative law judge found that, subsequent to the settlement agreements, employer “recharacterized” claimant’s separation from employment as “voluntary.” *See* CX 1 at 27; EX 9. The administrative law judge found that claimant did not establish that employer changed the reason for claimant’s termination with a view toward avoiding an adverse finding by the EEOC. Indeed, it appears that by the time the EEOC investigated the claim, claimant had already released her claims under Title VII. *See* CX 1 at 26-27.

Employment Services v. Trinity Marine Group, Inc., 261 F.3d 456, 35 BRBS 92(CRT) (5th Cir. 2001); *Equitable Equipment Co. v. Director, OWCP*, 191 F.3d 630, 33 BRBS 167(CRT) (5th Cir. 1999); *Armani v. Global Linguist Solutions*, 46 BRBS 63 (2012).

The administrative law judge's finding that claimant did not substantiate her claim that employer and/or her own counsel conspired to defraud her of benefits under the Act is rational and supported by substantial evidence. Moreover, as the administrative law judge correctly concluded, Section 8(i) settlement settlements are final and cannot be modified.⁴ 33 U.S.C. §922; *Diggles v. Bethlehem Steel Corp.*, 32 BRBS 79 (1998); *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.) (table), *cert. denied*, 528 U.S. 1052 (1999). Therefore, we affirm the denial of claimant's claim.

Accordingly, the administrative law judge's Decision and Order and the Order Denying Claimant's Petition for Reconsideration are affirmed.

SO ORDERED.

BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

⁴ Claimant's attempts to modify her state settlement agreement also were denied.