

ANTONIO PESINA)
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 Claimant-Petitioner)
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 v.)
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 ARMY & AIR FORCE EXCHANGE) DATE ISSUED: 9/24/99
 SERVICE)
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 Self-Insured)
 Employer-Respondent) DECISION and ORDER

Appeal of the Order of Remand and Order Denying Motion for Reconsideration of James W. Kerr, Jr., Administrative Law Judge, United States Department of Labor.

Antonio Pesina, San Antonio, Texas, *pro se*.

Matthew R. Lavery, Dallas, Texas, for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, McGRANERY, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Order of Remand and the Order Denying Motion for Reconsideration (98-LHC-1017) of Administrative Law Judge James W. Kerr, Jr., 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.*, as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *et seq.* (the Act). In an appeal by a *pro se* claimant, the Board 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. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant was injured on May 13, 1980, when he fell on his right side injuring his

cervical spine, shoulder, leg and lower back. Claimant underwent a posterior cervical fusion in August of 1980. He continued to treat with the neurosurgeon who performed the surgery, and sought benefits under the Act. After a formal hearing, but before the decision was rendered, the parties entered a settlement agreement. Under the terms of the agreement, claimant received \$100,000 for the discharge of employer's liability "to pay compensation to claimant for any and all injuries sustained by claimant" on May 13, 1980. However, the settlement agreement provided for ongoing medical treatment for injuries arising from the work-related accident. On January 28, 1998, claimant filed a pre-hearing statement claiming that he was entitled to treatment for a low back injury. Employer asserted that the settlement agreement did not cover compensation for his low back injury. After a review of the file and deposing claimant, employer concluded that the low back pain was covered by the settlement agreement and agreed to pay for medical treatment. As this issue was resolved, employer filed a Motion for Remand on August 12, 1998, and the matter was set for a telephone conference to resolve this motion. Claimant participated in this conference without legal representation. He did not raise any new issues at the conference.

Subsequent to the telephone conference, the administrative law judge found that there were no outstanding issues to be resolved, and thus remanded the case to the district director. On reconsideration, the administrative law judge noted that the settlement discharged employer of liability for the payment of any further compensation as a result of an injury which occurred on May 13, 1980, that employer has accepted liability for medical treatment for claimant's lower back pain, and found that the settlement agreement does not require employer to reemploy claimant or assist him in obtaining alternate employment. Thus, he restated his finding that there were no outstanding issues and denied the motion for reconsideration.

Claimant, without legal representation, appeals this decision, and primarily discusses the nature and extent of his disability following the May 13, 1980, accident. Claimants are not permitted to waive their right to compensation except through settlements approved under Section 8(i). *See* 33 U.S.C. §§908(i), 915, 916; *see generally Henson v. Arcwel Corp.*, 27 BRBS 212 (1993). Section 8(i) of the Act, 33 U.S.C. §908(i)(1994),¹ provides for the

¹Section 8(i)(1), as amended in 1984, states:

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

discharge of employer's liability for benefits where an application for settlement is approved by the district director or administrative law judge. The procedures governing settlement agreements are delineated in the implementing regulations at 20 C.F.R. §§702.241-702.243. In addition, the parties' settlement is limited to the rights of the parties and to the claims then in existence. *See Cortner v. Chevron Int'l Oil Co., Inc.*, 22 BRBS 218 (1989); *see generally Abercrombia v. Chaparral Stevedores*, 22 BRBS 18 (1988), *order on recon.*, 22 BRBS 18.4 (1989); 20 C.F.R. §702.241(g). Moreover, Section 22 of the Act explicitly states that settlements are not subject to modification. 33 U.S.C. §922; *see generally Downs v. Director, OWCP*, 803 F.2d 193, 19 BRBS 36 (CRT)(5th Cir. 1986); *Porter v. Kwajalein Services, Inc.*, 31 BRBS 112 (1997), *aff'd sub nom. Porter v. Director, OWCP*, 176 F.3d 484 (9th Cir. 1999)(table).

In the instant case, the settlement agreement which was signed by claimant while being represented by counsel, and which was approved by an administrative law judge in 1988 without objection by claimant, provides for the complete discharge of employer's liability for the payment of any further compensation as a result of the injury of May 13, 1980. This agreement applied to injuries to claimant's cervical spine, his shoulder, leg and low back. Claimant had been seeking permanent total disability benefits, and his entitlement to these benefits was disputed by employer. *See* H. Tr. at 9. These issues, and thus, the issues of nature and extent of disability that claimant raises in the current appeal, were resolved by the settlement agreement, which became final 30 days after approval by the administrative law judge. In view of claimant's representation by counsel when he signed the settlement agreement, and the specific statement in the agreement that the extent of claimant's disability was a disputed issue which the agreement was to resolve, we affirm the administrative law judge's finding that there are no outstanding issues in this case to be

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.

33 U.S.C. §908(i)(1)(1994).

resolved. *Rochester v. George Washington University*, 30 BRBS 233 (1997).

Accordingly, the administrative law judge's Order of Remand and Order Denying Motion for Reconsideration are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOM D. NELSON, Acting
Administrative Appeals Judge