



BRB No. 15-0109

ESTHER A. DeCRUISE-WILLIAMS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ARMY AND AIR FORCE EXCHANGE	)	DATE ISSUED: <u>Aug. 31, 2015</u>
SERVICE	)	
	)	
and	)	
	)	
CONTRACT CLAIMS SERVICES	)	
	)	
Employer/Carrier-	)	
Respondents	)	DECISION and ORDER

Appeal of the Compensation Order Approving Agreed Section 8(i) Settlement and Awarding Reduced Attorney Fees of Kenneth A. Krantz, Administrative Law Judge, United States Department of Labor.

E. Paul Gibson, Charleston, South Carolina, for claimant.

Ruth Bennett Whitfield (Army & Air Force Exchange Service), Dallas, Texas, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Compensation Order Approving Agreed Section 8(i) Settlement and Awarding Reduced Attorney Fees (2014-LHC-00965) 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.*, as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *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 law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls*

*Associates, Inc.*, 380 U.S. 359 (1965).

Claimant injured her left arm while working for employer at the Fort Jackson Exchange in South Carolina on April 25, 2012. Claimant and employer agreed to settle claimant's claim and they submitted an application to the administrative law judge for approval of their settlement pursuant to Section 8(i) of the Act, 33 U.S.C. §908(i). They agreed that employer would pay claimant a lump sum of \$30,000, representing \$20,000 for medical expenses and \$10,000 for compensation. The parties also agreed that employer would pay claimant's counsel a fee of \$8,000 for his services in this matter, and they attached counsel's fee petition to the agreement. The administrative law judge issued a Compensation Order approving the parties' settlement; however, despite the parties' agreement on the amount of an attorney's fee, the administrative law judge awarded counsel a fee and costs of \$3,149.90. Claimant appeals the fee reduction. Employer responds that it remains willing to pay the agreed-upon fee of \$8,000.<sup>1</sup>

Section 8(i), 33 U.S.C. §908(i), provides for the settlement of "any claim for compensation under this chapter." *See, e.g., Henson v. Arcwel*, 27 BRBS 212 (1993); 20 C.F.R. §§702.241-702.243. The parties may include a fee for the claimant's attorney in their settlement agreement. *Losacano v. Electric Boat Corp.*, 48 BRBS 49 (2014); 20 C.F.R. §702.132(c). The administrative law judge "shall approve the settlement within thirty days unless it is found to be inadequate or procured by duress[.]" 33 U.S.C. §908(i)(1), and any fee agreement in the settlement is deemed approved upon approval of the settlement. 20 C.F.R. §702.132(c).<sup>2</sup> Section 8(i) of the Act and its implementing regulations do not give an administrative law judge the authority to alter a complete Section 8(i) settlement submitted by the parties. 33 U.S.C. §908(i); 20 C.F.R. §§702.242, 702.243(a)-(c). Thus, if the administrative law judge disapproves any portion of a settlement, the entire settlement is disapproved unless the parties specifically stated in the settlement that portions could be severed and settled independently. 20 C.F.R. §702.243(e).

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<sup>1</sup> No party challenges the administrative law judge's approval of the remaining portions of the settlement agreement.

<sup>2</sup> Section 702.132(c), emphasis added, provides:

Where fees are included in a settlement agreement submitted under §702.241, *et seq.*[.] approval of that agreement shall be deemed approval of attorney fees for purposes of this subsection for work performed before the Administrative Law Judge or district director approving the settlement.

In *Losacano*, the parties resolved the claimant's claim for benefits via a Section 8(i) settlement. Although the administrative law judge approved the parties' settlement, his order amended that settlement in three ways. Relevant to this case, the administrative law judge in *Losacano* reduced the agreed-upon attorney's fee by rejecting the "requested" hourly rate and using an hourly rate he had previously set for the claimant's attorney. On appeal, the Board held that the administrative law judge's modification of the settlement terms was not permissible, as the Act and the implementing regulations limit the actions that can be taken upon the submission of a Section 8(i) settlement application. *Losacano*, 48 BRBS at 51-52.<sup>3</sup> Consequently, the Board modified the administrative law judge's order to comport with the parties' settlement agreement and the law. With regard to the attorney's fee specifically, the Board modified the order to reflect the employer's liability for the agreed-upon fee. *Id.* at 53-54.

In this case, as in *Losacano*, the administrative law judge effectively disapproved the attorney's fee aspect of the parties' settlement. He found the evidence submitted with the fee petition did not support the requested hourly rate, and he denied a fee for any work identified as having been provided prior to the transfer of the case to the Office of Administrative Law Judges.<sup>4</sup> As the administrative law judge otherwise approved the

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<sup>3</sup> When a settlement agreement is submitted to the administrative law judge, he can take only one of the following four actions within 30 days of his receipt of a settlement application: 1) issue a deficiency notice if the application is incomplete; 2) approve the settlement if it is adequate and not procured by duress; 3) disapprove the settlement if it is inadequate or was procured under duress; or 4) do nothing, in which case, if the parties are represented by counsel, the settlement will be deemed approved after 30 days. 33 U.S.C. §908(i)(1); 20 C.F.R. §§702.242, 702.243(b)-(c); *see Losacano*, 48 BRBS at 51-52.

<sup>4</sup> Contrary to the administrative law judge's order, the settlement did not state that employer agreed to a fee that was "not to exceed \$8,000." Compensation Order at 3. Rather, the settlement states that employer agreed to pay counsel \$8,000 for his reasonable fees and costs. Settlement Applic. at 6. The \$8,000 is a compromise for the services set forth in the fee petition, which total \$8,529.50, for work performed before both the administrative law judge and the district director. While the administrative law judge generally cannot award a fee for work performed before the district director, *Stratton v. Weedon Engineering Co.*, 35 BRBS 1 (2001) (*en banc*), as conceded by counsel in his brief, on the facts of this case, where the entire fee was compromised in a settlement for a specific amount, and the administrative law judge approved the settlement, the administrative law judge may, effectively, award a fee for work before the district director. *Losacano*, 48 BRBS 49; *Jenkins v. Puerto Rico Marine*, 36 BRBS 1 (2002); 20 C.F.R. §§702.132(c), 702.241(e).

parties' settlement application, his reduction of the agreed-upon attorney's fee was erroneous. 20 C.F.R. §702.132(c). For the reasons set forth in *Losacano*, we vacate the administrative law judge's fee award and modify his Compensation Order to reflect employer's liability for the agreed-upon \$8,000 attorney's fee, payable directly to counsel by employer.<sup>5</sup> *Losacano*, 48 BRBS at 53-54.

Accordingly, the administrative law judge's Compensation Order is modified to reflect employer's liability for an \$8,000 attorney's fee (less any amounts already paid) payable to claimant's counsel in accordance with the parties' settlement agreement and this decision. In all other respects, the Compensation Order is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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GREG J. BUZZARD  
Administrative Appeals Judge

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JONATHAN ROLFE  
Administrative Appeals Judge

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<sup>5</sup> Therefore, although claimant's counsel has applied to the district director for a fee, claimant's counsel is not entitled to an additional fee award for work performed before the district director in this case. *See* n.4, *supra*.