

U.S. Department of Labor

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



BRB No. 23-0376

WILSON KATUNGYE)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
CONSTELLIS GROUP/ TRIPLE CANOPY,)	
INCORPORATED)	
)	DATE ISSUED: 09/30/2024
and)	
)	
CONTINENTAL INSURANCE COMPANY/)	
CNA)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Order Approving Agreed Settlement - Section 8(i) of Ron Kucenski, Claims Examiner, United States Department of Labor.

Wilson Katungye, Ntungamo, Uganda.

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

PER CURIAM:

Claimant, without representation, appeals Claims Examiner Ron Kucenski's (the district director) Order Approving Agreed Settlement - Section 8(i) (OWCP No. LS-02327069) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901-950 (Act), as extended by the Defense

Base Act, 42 U.S.C. §§1651-1655 (DBA or Act).¹ The district director's approval of a settlement will be affirmed unless it is shown to be an abuse of discretion or not in accordance with law. *Sans v. Todd Shipyards Corp.*, 19 BRBS 24, 25 (1986); see *Oceanic Butler, Inc. v. Nordahl*, 842 F.2d 773, 782 (5th Cir. 1988).

Claimant filed a claim for psychological and hearing loss injuries arising out of his employment with Employer as a security guard in Iraq between 2010 and 2011. On April 28, 2022, Administrative Law Judge Evan H. Nordby (ALJ) issued a Decision and Order Awarding Medical Benefits and Denying Compensation (D&O) (2020-LHC-02086), awarding reasonable and necessary medical treatment for Claimant's work-related hearing loss and denying his claim for a psychological injury.² The ALJ also ordered that Claimant's counsel file a fee application within thirty (30) days from the date of service of his decision. Neither party appealed the ALJ's decision.

Subsequently, the parties advised the ALJ that they had reached a settlement to resolve all issues in the case and jointly moved for remand to the district director for review and approval of their settlement application under Section 8(i) of the Act, 33 U.S.C. §908(i). On June 1, 2023, the ALJ remanded the case to the district director.

On June 2, 2023, the parties filed their Section 8(i) settlement application with the district director. According to the terms of the settlement, Employer agreed to pay, and Claimant agreed to accept, \$7,300 in full satisfaction of entitlement to compensation and medical benefits for his hearing loss injury and \$200 in full satisfaction of entitlement to compensation and medical benefits for his disputed, and otherwise denied, psychological injury. The settlement also provided Employer would pay Claimant's counsel's fee in the amount of \$12,500. Settlement Appl. at 7.

¹ This case arises within the jurisdiction of the United States Court of Appeals for the Second Circuit because the office of the district director who issued the compensation order is located in New York. 33 U.S.C. §921(c); *McDonald v. Aecom Tech. Corp.*, 45 BRBS 45 (2011).

² The ALJ found Claimant did not establish by a preponderance of the evidence that his psychological injury was work-related. D&O at 8-15. He determined Claimant's hearing loss was work-related as a matter of law because Claimant invoked the Section 20(a) presumption, 33 U.S.C. §920(a), and Employer did not present substantial evidence to rebut the presumption. D&O at 11-12. However, he denied permanent partial disability compensation benefits because he found Claimant failed to prove the extent of his hearing loss. *Id.* at 18-19.

On June 16, 2023, the district director approved the terms of the parties' Section 8(i) settlement agreement, finding it "adequate and not procured by duress."

Claimant appeals, without representation, contending the settlement is not adequate to cover the costs of his ongoing and future medical treatment for both his hearing loss and his psychological injuries.³ Neither Employer nor the Director, Office of Workers' Compensation Programs (Director), filed a response.

Section 8(i) of the Act provides for the settlement of "any claim for compensation under this chapter." 33 U.S.C. §908(i). It further allows for settlement at any point in the proceedings, including after a final compensation order is issued. 33 U.S.C. §908(i)(3). A completed settlement application must be "a self-sufficient document which can be evaluated without further reference to the administrative file" and "signed by all parties." 20 C.F.R. §702.242(a); *see also Henry v. Coordinated Caribbean Transport*, 204 F.3d 609, 611 (5th Cir. 2000). It must contain a full description of the terms of the settlement, the reason for the settlement, the issues in dispute, the claimant's work status and future employment prospects, a current medical report indicating whether additional medical treatment is anticipated, itemization of medical expenses that have been paid, an estimate of the need and cost for future medical treatment, information concerning any collateral sources available for the payment of medical expenses, and a statement explaining why the settlement amount is adequate. 20 C.F.R. §702.242.

Once a completed settlement application is received, the district director or the ALJ "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). When determining whether the settlement is adequate, the district director must consider "all of the circumstances," including the claimant's age, education, and work history, the degree of disability and impairment, the availability of the type of work the claimant can perform, and the cost and necessity of future medical treatment. 20 C.F.R. §702.243(f); *Richardson v. Huntington Ingalls, Inc.*, 48 BRBS 23, 29 (2014). If the parties are represented by counsel, "the settlement shall be deemed approved unless specifically disapproved within thirty days." 20 C.F.R. §702.243(b); *see also* 33 U.S.C. §908(i)(1). Once approved, the effect of a settlement is to

³ With his appeal to the Benefits Review Board, Claimant submitted medical reports and receipts for medical treatment expenses he incurred before and after he signed the settlement agreement as well as before the district director approved the settlement. It appears these reports and receipts are new evidence that was not presented to the district director with the settlement application. Therefore, the Board cannot consider it. 33 U.S.C. §921(b)(3); *Wynn v. Clevenger Corp.*, 21 BRBS 290, 293 (1988); *Hansley v. Bethlehem Steel Corp.*, 9 BRBS 498, 499 (1978); 20 C.F.R. §802.301(b).

completely discharge the employer and carrier's liability for the claimant's injury. 33 U.S.C. §908(i)(3).

In this case, the settlement application submitted by the parties and approved by the district director complied with Section 8(i) and addressed the factors set forth in the implementing regulations. It was signed by Claimant, Claimant's counsel, and Employer's counsel; it addressed all the criteria required for a complete settlement application; and it included all the information needed for the district director to ascertain its adequacy. 20 C.F.R. §§702.241-702.243; *Richardson*, 48 BRBS at 28-29; *McPherson v. National Steel & Shipbuilding Co.*, 26 BRBS 71, 74-75 (1992), *aff'g on recon. en banc* 24 BRBS 224 (1991). Specifically, the settlement application detailed: the terms of the settlement (a lump sum payment of \$7,500 for compensation and medical benefits for both injuries and \$12,500 for attorney fees); the issues in dispute (future medical treatment needs, modification of the ALJ's decision and order, and attorney fees); the reasons for the settlement (to avoid ongoing investigations into Claimant's medical status, formal litigation, and modification of the ALJ's decision and order); Claimant's employment history and current work status in farming; Claimant's medical treatment history for his hearing loss and psychological injuries; a current medical report indicating future medical treatment needs (for hearing aids and medication); the amount of medical expenses that were paid in accordance with the ALJ's award for reasonable and necessary medical treatment for hearing loss (\$6,246.83); information concerning collateral sources available for the payment of medical expenses (public health care in Uganda); and a statement explaining why the settlement amount is adequate. 20 C.F.R. §702.242.

Pursuant to the terms of the agreement, Claimant stipulated the settlement amount "is adequate to compensate him with sufficient revenue for full and complete compensation for any permanent disability, lost wages, or loss of earning capacity" and "is adequate to compensate him with sufficient revenue for reimbursement of past medical expenses ... and for full and complete compensation of any additional future medical treatment" attributable to his claimed injuries. He further agreed there are no outstanding medical expenses and agreed to be solely responsible for any outstanding medical expenses in the event there were any that were not presented for payment or paid. Settlement Appl. at 5-6, 8-9. By executing the settlement agreement on December 9, 2022, Claimant attested he "carefully considered" it, found it adequate, and had adequate time to review it and consult with his attorney regarding its terms. He also acknowledged his attorney "accurately and faithfully represented his desire to enter into a settlement" for the amounts contained within the agreement. *Id.* at 9-10.

The settlement application in this case is a "self-sufficient stipulation, signed by all parties," which "enable[d] [Claimant] to know all that he needs to know about his case, his medical and any disability conditions, and the amounts of benefits he w[ould] receive."

Henry, 204 F.3d at 611. Further, it contained sufficient information for the district director to determine its adequacy. *Richardson*, 48 BRBS at 28-29; *McPherson*, 26 BRBS at 74-75. Considering the terms of the settlement, Claimant's representation by counsel at the time, and his limited success when his claim was formally adjudicated, Claimant has not shown the district director abused his discretion in approving the parties' settlement application. As the district director permissibly found the settlement adequate and not procured under duress,⁴ we affirm his approval of the parties' settlement application under Section 8(i) of the Act. 33 U.S.C. §908(i); *Richardson*, 48 BRBS at 30.

Accordingly, we affirm the Order Approving Agreed Settlement - Section 8(i).

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

⁴ Claimant does not assert any fraud or duress.