BRB No. 98-1556

EUGENE FLOYD	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
PENN TERMINALS, INCORPORATED	)	DATE ISSUED:_____
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION, LIMITED	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Approving Settlement of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Eugene Floyd, Brookhaven, Pennsylvania, *pro se*.

John E. Kawczynski (Weber, Goldstein, Greenberg & Gallagher), Philadelphia, Pennsylvania, for employer/carrier.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Approving Settlement (96-LHC-2298) of Administrative Law Judge Paul H. Teitler 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); 20 C.F.R. §§802.211(e), 802.220.

Claimant injured his back during the course of his employment with employer on

April 26, 1996. The parties submitted an application for a Section 8(i), 33 U.S.C. §908(i), settlement. Under the agreement, claimant would receive a lump sum payment of $50,000, and his attorney would receive a fee of $8,000. After questioning claimant and obtaining his assurance that he understood and agreed with the settlement, and after stating he considered the application and the criteria in the regulations, 20 C.F.R. §702.243, the administrative law judge summarily approved the settlement, finding it fair, adequate, and in claimant's best interests. Decision and Order at 1. On August 12, 1998, claimant filed a *pro se* appeal of the administrative law judge's decision, challenging the adequacy of both the settlement amount and the attorney's fee. Employer responds, urging affirmance and arguing that the settlement cannot be modified.[1]

Section 8(i) of the Act permits the parties to a dispute to resolve their differences by agreeing to settle the claim. 33 U.S.C. §908(i); 20 C.F.R. §§702.241 *et seq.* Section 702.242(a) of the implementing regulations states that the application for settlement must be in the form of a stipulation signed by the parties, and Section 702.242(b) lists eight specific requirements for a complete application, including statements concerning the claimant's current medical condition, his employability, and the adequacy of the proposed settlement. 20 C.F.R. §702.242(a)-(b). In this case, claimant contends the settlement figure is inadequate.[2] As claimant is proceeding without the assistance of counsel, the Board must review any findings of fact and conclusions of law adverse to claimant to ascertain whether they accord with law and are supported by substantial evidence in the record.

[1]We reject employer's argument as claimant has not attempted to modify the settlement herein, but rather has filed a timely appeal challenging the administrative law judge's decision to approve it based on its adequacy. *Compare* the instant case *with Diggles v. Bethlehem Steel Corp.*, 32 BRBS 79 (1998), *and Porter v. Kwajalein Services, Inc.*, 31 BRBS 112 (1997), *aff'd on recon.*, 32 BRBS 56 (1998) (Board rejects attempts to modify Section 8(i) settlements).

[2]Claimant also feels his attorney did not "get the job done[,]" and is displeased that his attorney is to receive $8,000 under the agreement.

A review of the record and, in particular, the settlement application reveals that the application is deficient. While it contains some of the eight specific requirements listed in the regulations,[3] the application lacks a statement as to why the proposed settlement is adequate as required by Section 702.242(b)(6), 20 C.F.R. §702.242(b)(6). Section 702.242(b)(6) specifically states: "The settlement application shall contain the following: . . . (6) A statement explaining how the settlement amount is considered adequate." Consequently, the settlement application in the instant case is deficient as a matter of law and cannot receive approval. *McPherson v. National Steel & Shipbuilding Co.*, 24 BRBS 224 (1991), *aff'd on recon. en banc*, 26 BRBS 71 (1992); 20 C.F.R. §702.242(b)(6). Moreover, although the administrative law judge concluded that the settlement is "fair, reasonable and adequate" and in claimant's best interest, Decision and Order at 1, there is nothing in the record to support the conclusion that the settlement is adequate. The administrative law judge's questions to claimant, and the settlement application itself, addressed only claimant's agreement without duress but did not consider the adequacy of the amount as compared to claimant's physical condition and current and future medical expenses. Tr. at 5-7; *see* settlement application. We note also that the settlement application, which states that claimant stipulated to an ability to earn post-injury wages of $189.63, does not completely address other factors related to claimant's employability, 20 C.F.R. §702.242(b)(4), nor does it address claimant's current medical condition. 20 C.F.R. §702.242(b)(5). This information is necessary for ascertaining whether the proposed settlement is adequate. Because there is nothing in the record on which to base a finding of adequacy, the administrative law judge's discussion on the matter is entirely conclusory and must be revisited. Therefore, we vacate the administrative law judge's decision to approve the proposed settlement, and we remand the case to him for further proceedings as necessary.[4]

Accordingly, the administrative law judge's Decision and Order is vacated, and the case is remanded for further proceedings.

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

[3]The application contains, *inter alia*, statements regarding claimant's date of birth, his average weekly wage at the time of the injury, the lump sum figure to which the parties agreed, claimant's agreement without duress or coercion, and his agreement that the settlement is in his own best interests. *See* Settlement application; 20 C.F.R. §702.242.

[4]In light of our decision herein, we need not address claimant's contention regarding the amount of the attorney's fee.

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ROY P. SMITH
Administrative Appeals Judge

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JAMES F. BROWN
Administrative Appeals Judge