U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 15-0470

DAVID F. PITTMAN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED: June 20, 2016
NEW CENTURY FABRICATORS, INCORPORATED	)	
	)	
and	)	
	)	
AMERICAN INTERSTATE INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision on Motion for Summary Decision of Patrick M. Rosenow, Administrative Law Judge, United States Department of Labor.

Jerry C. von Sternberg (Spagnoletti & Co.), Houston, Texas, for claimant.

John C. Elliott (Schouest, Bamdas, Soshea & BenMaier, PLLC), Houston, Texas, for employer/carrier.

MacKenzie Fillow (M. Patricia Smith, Solicitor of Labor; Maia Fisher, Acting Associate Solicitor, Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BOGGS, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision on Motion for Summary Decision (2014-LHC-01517) of Administrative Law Judge Patrick M. Rosenow 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). We must affirm the administrative law judge's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and 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, a sandblaster/painter for employer, sustained neck and back injuries in a June 20, 2013 work-related accident, when he fell to the deck of a supply vessel during a personnel basket transfer from a jack-up vessel to the supply vessel. Cl. Brief - Ex. 2. On July 18, 2013, claimant filed a claim for benefits under the Act. *Id*. Employer controverted the claim, Emp. Brief - Ex. B, and has paid no compensation or medical benefits to claimant. *See* Decision at 2 n.3. On July 17, 2013, the day before the claim was filed, claimant filed a third-party tort suit in federal court against the owner of the jack-up vessel, Hercules Offshore, Incorporated. Emp. Brief - Ex. C. On April 10, 2015, claimant and Hercules settled the third-party suit for the gross amount of $650,000. Cl. Brief - Ex. 3. Claimant's net recovery was $375,000, and the remaining $275,000 went to attorney's fees and expenses. Cl. Brief - Ex. 4; Emp. Brief - Ex. E. Employer was aware of the third-party lawsuit and settlement negotiations but did not give written approval of the settlement. *See* Decision at 2; Cl. Response to Emp. Motion for Dismissal at 2.

After the case was transferred to the Office of Administrative Law Judges, employer filed a motion for dismissal of the claim for benefits under the Act, asserting that if the amount of the third-party settlement is less than the amount of employer's liability for compensation under the Act, the claim is barred by Section 33(g), 33 U.S.C. §933(g), and, alternatively, if the third-party settlement amount is more than employer's liability under the Act, employer's entitlement to a Section 33(f), 33 U.S.C. §933(f), credit would extinguish its liability under the Act. Employer argued that, in either event, employer has no liability for benefits under the Act and the claim should be dismissed. Claimant responded that genuine issues of material fact exist regarding the applicability of Section 33(g) with respect to whether the gross third-party settlement amount exceeds employer's liability for claimant's lifetime compensation and as to the amount of the Section 33(f) credit, which is based on claimant's net third-party recovery. Claimant asserted that as employer provided no evidence regarding the amount of claimant's total lifetime entitlement to compensation under the Act, this presented a factual issue to be decided following a formal hearing.[1] Thereafter, in response to the administrative law

[1] Employer's reply and claimant's sur-reply essentially reiterated their respective arguments.

judge's request that claimant submit a proposed valuation of his lifetime compensation entitlement, claimant asserted that he is entitled to a total of $524,960.38 in lifetime compensation under the Act.[2] Emp. Brief - Ex. E.; *see also* Decision at 2. In response, employer noted its disagreement with claimant's valuation of his compensation entitlement but took the position that, even using claimant's valuation, his claim is barred by Section 33(g).

The administrative law judge granted employer's motion for summary decision and dismissed the claim. Specifically, the administrative law judge compared claimant's proposed valuation of his lifetime compensation entitlement, $524,960.38, to claimant's net recovery from the third-party settlement, $375,000. *See* Decision at 5. The administrative law judge concluded that because claimant's net recovery is less than the amount of his claimed compensation entitlement, and he failed to obtain written approval of the third-party settlement from employer and carrier, his claim is barred by Section 33(g). *See id*. at 5-6.

On appeal, claimant assigns error to the administrative law judge's comparison of the net, rather than the gross, amount of the third-party settlement with the amount of claimant's lifetime compensation entitlement. Claimant contends that because the gross amount of the settlement exceeds his compensation entitlement, Section 33(g) does not bar his claim, and he therefore urges the Board to reverse the administrative law judge's decision and remand the case for further proceedings.[3] The Director responds, agreeing with claimant that because the administrative law judge erroneously used the net, rather than the gross, settlement amount in finding the claim barred under Section 33(g), the decision must be vacated and the case remanded for the administrative law judge to determine the amount of claimant's lifetime compensation entitlement and to make the appropriate comparison. Employer also responds to claimant's appeal, urging affirmance of the administrative law judge's dismissal of the claim. Specifically, employer argues that the administrative law judge's use of the net amount of the third-party settlement in making the Section 33(g) comparison with claimant's own valuation of his compensation entitlement is consistent with the Supreme Court's decision in *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 26 BRBS 49(CRT) (1992). Employer argues, in the

[2] Specifically, claimant asserted that he is entitled to $57,821 for temporary total disability benefits for the period from June 20, 2013 to February 12, 2015. He asserted that he is entitled to an additional $467,138.44 for permanent partial disability benefits commencing February 13, 2015, and continuing for the remainder of his life expectancy of 30 years. Emp. brief - Ex. E.

[3] In his brief to the Board, claimant requests that the Board hold oral argument. We deny claimant's request as oral argument will not aid in the disposition of this case and as claimant's request for oral argument was not submitted in the form of a separate motion. 20 C.F.R. §§802.305, 802.306.

alternative, that even if the claim is not barred by Section 33(g), employer's liability for benefits is extinguished by its entitlement to a Section 33(f) credit.

For the reasons that follow, we must vacate the administrative law judge's determination to grant summary decision. Summary decision is proper only when there are no genuine issues of material fact and no controversy concerning inferences to be drawn from the facts, such that the moving party is entitled to judgment as a matter of law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Dunn v. Lockheed Martin Corp.*, 33 BRBS 204 (1999); 29 C.F.R. §18.41. The administrative law judge must look at the facts in the light most favorable to the party opposing summary decision to determine whether there is an absence of a genuine issue of material fact. *See Brockington v. Certified Electric, Inc.*, 903 F.2d 1523 (11th Cir. 1990), *cert. denied*, 498 U.S. 1026 (1991). We agree with claimant and the Director that the administrative law judge did not apply relevant law to determine the applicability of Section 33(g) and that there remain genuine issues of material fact which must be resolved in order to make that determination. *Gladney et al. v. Ingalls Shipbuilding, Inc.*, 30 BRBS 25, 27-28 (1996) (McGranery, J., concurring in the result only).

Pursuant to Section 33(a), 33 U.S.C. §933(a), a claimant may proceed in tort against a third party if he determines that the third party may be liable for damages for his work-related injuries. In order to protect an employer's right to offset any third-party recovery against its liability for compensation under the Act, *see* 33 U.S.C. §933(f), a claimant, under certain circumstances, must either give the employer notice of a settlement with a third party or a judgment in his favor, or he must obtain his employer's and carrier's prior written approval of the third-party settlement. 33 U.S.C. §933(g);[4]

[4] Section 33(g), 33 U.S.C. §933(g), states:

> (1) If the person entitled to compensation (or the person's representative) enters into a settlement with a third person referred to in subsection (a) of this section for an amount less than the compensation to which the person (or the person's representative) would be entitled under this chapter, the employer shall be liable for compensation as determined under subsection (f) of this section only if written approval of the settlement is obtained from the employer and the employer's carrier, before the settlement is executed, and by the person entitled to compensation (or the person's representative). The approval shall be made on a form provided by the Secretary and shall be filed in the office of the deputy commissioner within thirty days after the settlement is entered into.
>
> (2) If no written approval of the settlement is obtained and filed as required by paragraph (1), or if the employee fails to notify the employer of any settlement obtained from or judgment rendered against a third person, all

Edwards v. Marine Repair Services, Inc., 49 BRBS 71 (2015), *aff'd and modified on recon.*, 50 BRBS 7 (2016). The Supreme Court has held that Section 33(g)(2) requires a "person entitled to compensation" (PETC) to provide notice of the termination of the third-party proceedings to his employer in two instances: "(1) Where the employee obtains a judgment, rather than a settlement, against a third party; and (2) Where the employee settles for an amount greater than or equal to the employer's total liability." *Cowart*, 505 U.S. at 482, 26 BRBS at 53(CRT). Thus, the prior written approval requirement of Section 33(g)(1) is inapplicable in those two instances. Pursuant to Section 33(g)(1), prior written approval is necessary only when the PETC enters into a settlement with a third party for less than the compensation to which the claimant is entitled under the Act. *Id.*; *see Bundens v. J.E. Brenneman Co.*, 46 F.3d 292, 29 BRBS 52(CRT) (3d Cir. 1995); *Honaker v. Mar Com, Inc.*, 44 BRBS 5 (2010); *Esposito v. Sea-Land Service, Inc.*, 36 BRBS 10 (2002); 20 C.F.R. §702.281.

In determining whether Section 33(g)(1) bars the claim in this case, the administrative law judge compared the net amount of the third-party settlement to the amount of claimant's entitlement to compensation under the Act. *See* Decision at 5. This case arises within the jurisdiction of the United States Court of Appeals for the Fifth Circuit, which has not directly ruled on the issue raised by this appeal. However, the only two circuit courts to have explicitly considered the issue have held that in making the requisite comparison under Section 33(g)(1), the gross, rather than the net, amount of the settlement should be used. *Bundens*, 46 F.3d at 305-306, 29 BRBS at 71-72(CRT); *accord Brown & Root, Inc. v. Sain*, 162 F.3d 813, 32 BRBS 205(CRT) (4th Cir. 1998). In *Bundens*, the Third Circuit compared the language of Section 33(f) to Section 33(g), observing that Section 33(f)[5] specifically refers to the "*net* amount recovered against such third person," whereas Section 33(g) refers simply to "a settlement . . . for an amount less

---

> rights to compensation and medical benefits under this chapter shall be terminated, regardless of whether the employer or the employer's insurer has made payments or acknowledged entitlement to benefits under this chapter.

[5] Section 33(f), 33 U.S.C. §933(f), states:

> If the person entitled to compensation institutes proceedings within the period prescribed in subsection (b) of this section the employer shall be required to pay as compensation under this chapter a sum equal to the excess of the amount which the Secretary determines is payable on account of such injury or death over the net amount recovered against such third person. Such net amount shall be equal to the actual amount recovered less the expenses reasonably incurred by such person in respect to such proceedings (including reasonable attorneys' fees).

than the compensation to which the person . . . would be entitled." *Bundens*, 46 F.3d at 305, 29 BRBS at 71-72(CRT); *see also Sain*, 162 F.3d at 818, 32 BRBS at 209(CRT). The court reasoned that Congress demonstrated its ability to specify "net amount" in Section 33(f), but chose not to do so in Section 33(g). *Bundens*, 46 F.3d at 305, 29 BRBS at 72(CRT); *see also Sain*, 162 F.3d at 818, 32 BRBS at 209(CRT). The *Bundens* court added that its conclusion that the omission of the phrase "net amount" in Section 33(g) was intentional is buttressed by the fact that the inclusion of the "net amount" language in Section 33(f) was part of a comprehensive overhaul of Section 33 in 1984. The court noted that despite the fact that Congress substantially rewrote Section 33(g) at the same time, it did not elect to include in that subsection the "net amount" language that was included in Section 33(f). *Bundens*, 46 F.3d at 305, 29 BRBS at 72-73(CRT).

In *Harris v. Todd Pacific Shipyards Corp.*, 30 BRBS 5, 16 (1996), *aff'g and modifying on recon. en banc* 28 BRBS 254 (1994) (Brown and McGranery, JJ., concurring and dissenting), a case arising within the jurisdiction of the Ninth Circuit, the Board found the reasoning of the Third Circuit in *Bundens* to be persuasive and therefore adopted the court's holding that the gross amount of the third-party settlement is the applicable figure for purposes of the Section 33(g) comparison. The Board has subsequently followed the position espoused by the Third Circuit in *Bundens* and the Fourth Circuit in *Sain* in cases arising under the Act in all circuits, and has consistently held that the gross amount is the relevant figure for purposes of the Section 33(g) comparison. *See Edwards*, 49 BRBS at 74; *Bockman v. Patton-Tully Transp. Co.*, 41 BRBS 34, 38 (2007); *Esposito*, 36 BRBS at 12; *Pool v. General American Oil Co.*, 30 BRBS 183, 188-189 (1996) (Brown, J., dissenting); *Gladney*, 30 BRBS at 27-28.[6] We therefore agree with the Director that the administrative law judge's failure to use the gross amount of the third-party settlement when making the Section 33(g) comparison is contrary to well-established precedent, and that the administrative law judge's decision consequently must be vacated and the case remanded for the proper comparison to be made. *See Bundens*, 46 F.3d at 305-306, 29 BRBS at 71-72(CRT); *accord Sain*, 162 F.3d at 818, 32 BRBS at 209(CRT); *Harris*, 30 BRBS at 16; *see also Edwards*, 49 BRBS at 74; *Bockman*, 41 BRBS at 38; *Esposito*, 36 BRBS at 12; *Pool*, 30 BRBS at 188-189; *Gladney*, 30 BRBS at 27-28.

Employer avers that the *Sain* and *Bundens* opinions are not binding authority in this case which arises within the jurisdiction of the Fifth Circuit, and that because the *Sain* and *Bundens* courts apparently overlooked the underlying facts in *Cowart*, 505 U.S. 469, 26 BRBS 49(CRT),[7] those cases were wrongly decided. We are not persuaded by

[6] It is noted that the *Bockman*, *Pool* and *Gladney* cases arose within the jurisdiction of the Fifth Circuit, as does this case.

[7] In *Cowart*, the Supreme Court addressed the proper interpretation of the phrase "person entitled to compensation" contained in Section 33(g)(1), in a case in which the

employer's argument. In *Cowart*, the Supreme Court addressed, and rejected, the claimant's argument that the Court's interpretation of Section 33(g) leaves the notification requirements of Section 33(g)(2) without meaning. *Cowart*, 505 U.S. at 482, 26 BRBS at 53(CRT). The Court held that an employee is required to provide notification to his employer pursuant to Section 33(g)(2), but is not required to obtain written approval pursuant to Section 33(g)(1) in two instances: "(1) where the employee obtains a judgment, rather than a settlement, against a third party; and (2) where the employee settles for an amount greater than or equal to the employer's total liability." *Id.* In *Cowart*, the employer was liable for scheduled permanent partial disability benefits in the amount of $35,592.77. *Id.*, 505 U.S. at 471, 26 BRBS at 50(CRT). Employee Cowart settled the third-party action for a gross amount of $45,000, and his net recovery after attorney's fees and expenses was $29,350.60. *Id*. In finding that the Section 33(g)(1) forfeiture provision applied, the Supreme Court apparently assumed that the net amount of the third-party settlement was the relevant figure to use in determining whether the employee settled for an amount less than the employer's compensation liability. However, the issue of whether the gross or the net amount of the third-party settlement should be used in making the Section 33(g)(1) comparison was not raised before the Supreme Court nor was the issue raised in the prior proceeding before the Fifth Circuit in the *Cowart* case, *Nicklos Drilling Co. v. Cowart*, 927 F.2d 828, 24 BRBS 93(CRT) (5th Cir. 1991) (*en banc*), and neither court discussed the issue.

Employer contends that, in view of the facts underlying *Cowart*, the Supreme Court's decision in that case stands for the proposition that Section 33(g)(1) bars an award under the Act to any claimant who settles with a third party for a net amount less than his entitlement to compensation under the Act even if the gross settlement amount is greater than the compensation entitlement. Noting that, as in *Cowart*, claimant here settled his third-party action for a gross amount more than, and a net amount less than, his claimed compensation entitlement, employer contends that the administrative law judge's

---

employee sustained a work-related injury to his hand, entered into a third-party settlement thereafter, and was not receiving compensation payments at the time he entered into the third-party settlement. The sole issue before the Supreme Court was whether the Section 33(g)(1) forfeiture provision applies to an employee whose employer, at the time of the third-party settlement, is neither paying compensation nor yet subject to an order to pay compensation under the Act. *Cowart*, 505 U.S. 469, 471, 26 BRBS 49, 50(CRT). The Court stated that an employee becomes a "person entitled to compensation" at the moment his right to recovery vests, not when his employer admitted liability. *Id.*, 505 U.S. at 477, 26 BRBS at 51-52(CRT). The Court therefore held that employee Cowart was a "person entitled to compensation" at the time of his injury and that under the plain language of Section 33(g), he forfeited his right to benefits by his failure to obtain the written approval of the employer and carrier prior to entering into the third-party settlement. *Id.*, 505 U.S. at 475, 26 BRBS at 51(CRT).

finding that the claim is barred by Section 33(g) is consistent with the result reached in *Cowart.* In the absence of a holding in *Cowart* on this specific issue, we do not conclude that the result reached in *Cowart* supports the proposition of law propounded by employer. Moreover, we note that the *Bundens* and *Sain* decisions were issued subsequent to *Cowart*. The Board's decision in *Harris* applying *Bundens* was published and established Board precedent which binds this panel absent a Supreme Court or circuit court ruling to the contrary. In the twenty years since the Board's decision in *Harris* was issued, the Board has consistently held that the gross amount of the third-party settlement is the applicable figure for a Section 33(g)(1) comparison, in accordance with the position taken by the Third Circuit in *Bundens* and the Fourth Circuit in *Sain*, the only circuit courts to have specifically addressed the issue. As the Supreme Court's decision in *Cowart* does not represent precedent that is directly contrary to that of the Board and the Third and Fourth Circuits, we cannot accede to employer's invitation to overturn longstanding precedent that the gross amount of the third-party settlement should be used in making the Section 33(g)(1) comparison.

Employer further argues, in reliance on the Fifth Circuit's decision in *Villanueva v. CNA Ins. Companies*, 868 F.2d 684 (5th Cir. 1989),[8] that even if the claim is not barred by Section 33(g)(1), Section 33(f) operates to "extinguish" its liability for benefits. The Board has previously addressed, and rejected, this argument in two cases arising within the jurisdiction of the Fifth Circuit, *Gladney*, 30 BRBS at 27-28, and *Pool*, 30 BRBS at 188-189. Specifically, the Board held that factual situations may arise where all benefits are not offset by Section 33(f),[9] and, thus, Section 33(f) does not necessarily extinguish an employer's total liability for benefits in every case, although this may be the practical effect in many cases. *Pool*, 30 BRBS at 188-189; *Gladney*, 30 BRBS at 27-28; *see also Harris*, 28 BRBS at 268-269. Rather, Section 33(f) provides the employer with an offset

[8] In *Villanueva*, decided three years before the Supreme Court's decision in *Cowart*, the Fifth Circuit instructed the district court to deny the claimant's cross-claim for additional compensation and medical benefits under the Act. *Villanueva*, 868 F.2d at 687-688. The Fifth Circuit stated that although it was impossible to tell whether the third-party settlement agreement was for more or less than the claimant's entitlement under the Act, it was not necessary to make such a finding as the employer had no further liability for compensation. *Id*. The court stated that if the third-party settlement was greater than the claimant's compensation entitlement, Section 33(f) extinguished the employer's liability, and if the settlement was less than the compensation entitlement, Section 33(g) precluded additional compensation because the claimant failed to obtain prior written approval of the settlement. *Id*.

[9] For instance, an employee may outlive his life expectancy and, thus, the employer's liability for compensation would resume once the net proceeds from the third-party settlement are offset under Section 33(f).

in the amount of the claimant's net third-party recovery against its liability for compensation and medical benefits, and compensation and medical benefits are suspended until the net recovery is exhausted. The Board therefore determined that the Fifth Circuit's statement in *Villaneuva*, 868 F.2d at 687-688, that it was unnecessary to compare the employee's entitlement under the Act with his third-party recovery because his entitlement was either barred by Section 33(g) or offset under Section 33(f), does not stand for the broad proposition that such a comparison is unnecessary in every case. *Pool*, 30 BRBS at 188; *Gladney*, 30 BRBS at 27-28; *see also Harris*, 28 BRBS at 268-269.[10] The Board reasoned that failure to make the comparison and to determine which subsection of Section 33(g) applies would effectively read out of the Act the Section 33(g)(2) notice requirement for third-party settlements. *Gladney*, 30 BRBS at 28; *see also Harris*, 28 BRBS at 266 n. 12. Thus, for the reasons set forth in *Pool* and *Gladney*, we reject employer's contention that the Fifth Circuit's decision in *Villaneuva* results in the conclusion that claimant's claim should be dismissed because employer bears no further liability under the Act.

We, therefore, vacate the administrative law judge's decision granting summary decision and remand the case for the administrative law judge to determine whether Section 33(g) bars the claim by making a comparison between the gross amount of the third-party settlement and claimant's lifetime compensation entitlement. The Board has held that, in a case involving a continuing award, the administrative law judge may use any reasonable method to calculate the amount of compensation under the Act to which the claimant would be entitled over his lifetime. *Linton v. Container Stevedoring Co.*, 28 BRBS 282, 288-289 (1994).[11] Specifically, the administrative law judge should make findings regarding the extent of claimant's disability, the applicable compensation rate

[10] In *Harris*, 28 BRBS at 268-269, the Board rejected the argument that the Supreme Court's decision in *Cowart*, 505 U.S. 462, 26 BRBS 49(CRT), stands for the proposition that Section 33(f) extinguishes an employer's total liability in all cases. The Board noted that the employee in *Cowart* was deceased by the time the case reached the Supreme Court and the claim was for a scheduled injury. Thus, the Court did not have to consider possibilities such as worsening disability in its discussion of Section 33(f). *Harris*, 28 BRBS at 269. As the effect of Section 33(f) was not before the Court in *Cowart*, the Board stated in *Harris* that the *Cowart* Court's statement that where the employee settles for an amount greater than the employer's compensation liability, the employer's liability for compensation is "wiped out" under Section 33(f), *see* 505 U.S. at 482-483, 26 BRBS at 53(CRT), is merely *dicta*. *Harris*, 28 BRBS at 269.

[11] It is noted that the Board's holding in *Linton*, that the net, rather than the gross, amount of the third-party settlement was to be used in making the Section 33(g)(1) comparison, 28 BRBS at 289, was subsequently overruled by the Board's decision on reconsideration *en banc* in *Harris*, 30 BRBS at 16. In all other respects, the principles set forth on *Linton* remain valid.

and claimant's life expectancy, and he may consider medical evidence, actuarial tables and any other probative evidence. *Id*. If the gross amount of claimant's third-party settlement is less than the amount of claimant's lifetime entitlement to compensation under the Act, exclusive of medical benefits, claimant's failure to obtain the employer's and carrier's prior written approval of the settlement bars his claim for disability and medical benefits, pursuant to Section 33(g)(1). *See Esposito*, 36 BRBS 10; *Pool*, 30 BRBS at 188-189; *Gladney*, 30 BRBS 25. If, however, the gross settlement amount is greater than claimant's compensation entitlement, the administrative law judge must determine, based on all the relevant facts, whether claimant complied with the notice provision of Section 33(g)(2). *See Edwards*, 50 BRBS 7; *see also Bundens*, 46 F.3d at 306, 29 BRBS at 73-74(CRT); *Bethlehem Steel Corp. v. Mobley*, 920 F.2d 558, 24 BRBS 49(CRT) (9th Cir. 1990), *aff'g* 20 BRBS 239 (1988). Moreover, if the administrative law judge finds, on remand, that the gross amount of the third-party settlement is greater than employer's compensation liability, employer is entitled to an offset under Section 33(f) for the net amount of the third-party settlement, but its liability for compensation would resume after the net proceeds are offset. *Gladney*, 30 BRBS 25.

Accordingly, the administrative law judge's decision granting employer's motion for summary decision is vacated, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

_____
JUDITH S. BOGGS
Administrative Appeals Judge

_____
RYAN GILLIGAN
Administrative Appeals Judge

_____
JONATHAN ROLFE
Administrative Appeals Judge