BRB No. 98-1508

TIMOTHY W. CLARK	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY	)	DATE ISSUED: August 17, 1999
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Medical Benefits for a Right Knee Impairment of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

John H. Klein (Montagna, Klein & Camden L.L.P.), Norfolk, Virginia, for claimant.

Benjamin M. Mason (Mason & Mason, P.C.), Newport News, Virginia, for self-insured employer.

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

HALL, Chief Administrative Appeals Judge:

Claimant appeals the Decision and Order Denying Medical Benefits for a Right Knee Impairment (97-LHC-1647) of Administrative Law Judge Richard K. Malamphy 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, LHWCA). We must affirm the findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant began working for employer in its machine shop in 1984, and worked in that capacity until transferring to employer's pipe department in 1990 or 1991. Claimant worked for employer as a pipe fitter until December 1995, when he resigned pursuant to a settlement of his workers' compensation claims for a number of work-related injuries.[1] Claimant actually last worked for employer on June 8, 1995, and did not work between that date and the effective date of his resignation, January 12, 1996.

Claimant stated that he first experienced problems with his right knee shortly after joining the pipe fitters, and that the combination of climbing, bending, and carrying heavy items over the next several years worsened the condition of his right knee such that he filed a claim for medical benefits on May 9, 1996, listing the date of injury as December 21, 1995. At the hearing, claimant testified that he never reported his right knee condition while working for employer because he was "too dedicated to the shipyard." Hearing Transcript at 27. Following his examination of claimant on January 3, 1996, Dr. Prillaman diagnosed probable chondromalacia of the patella in the right knee. He concluded that claimant's right knee injury is caused by wear and tear, and not related to any specific single injury.

Claimant and employer executed a Settlement Agreement pursuant to Section 8(i) of the Act, 33 U.S.C. §908(i), wherein claimant, in exchange for a lump sum payment of $36,000,[2] discharged employer from any and all liability connected with claims filed for injuries to claimant's back, left knee and left groin. Specifically, the agreement states:

> Settlement includes all issues outstanding between the parties which were raised or could have been raised under the LHWCA for these and any other injuries caused by Employer. Therefore, the Employee understands that the Employer will be discharged from any and all liability, both direct and indirect, for any further compensation, past,

[1]As shall be discussed in further detail below, the settlement explicitly covered injuries to claimant's back, left knee, and left groin.

[2]The terms of the settlement include compensation of $30,000, $5,000 in medical benefits, and $1,000 for attorney's fees.

> present or future and future medical benefits, related medical expenses, and vocational rehabilitation costs, which are due or may become due as a result of the back injuries sustained by Claimant on or about 8/11/88, 7/14/89, and 6/29/95, the left knee injury sustained by Claimant on or about 11/6/87, the left groin injury sustained by Claimant on or about 4/19/94, and *any other injuries caused by the Employer*.

Employer's Exhibit (EX) 6 at 7-8 [emphasis added]. In an Approval of Agreed Settlement dated January 12, 1996, the district director concluded that the settlement is adequate, not procured by duress and effects a final disposition of the employee's claims.[3]

In his decision, the administrative law judge determined that the Section 8(i) settlement precludes claimant from recovering any medical expenses under the Act for his right knee condition. In particular, the administrative law judge found that the specific language of the agreement that the "[s]ettlement includes all issues outstanding between the parties which were raised or could have been raised under the LHWCA for these and any other injuries caused by Employer," specifically discharges employer from liability for any medical expenses for any work-related injuries. The administrative law judge then determined that claimant's testimony that his right knee began giving him trouble shortly after he joined the pipe fitters' department in 1990 or 1991, establishes that he was aware of a right knee injury when he signed the settlement agreement on December 12, 1995, and thus, that he should have known that liability for any such condition would be discharged by the terms of the Section 8(i) settlement. In addition, the administrative law judge observed that allowing claimant to avoid the consequences of an agreement he entered into voluntarily would defeat the policy behind Section 8(i) settlements. Accordingly, the administrative law judge denied claimant's claim for medical expenses due to a right knee injury based upon the terms of the December 12, 1995, Section 8(i) settlement agreement.

On appeal, claimant challenges the administrative law judge's denial of medical benefits for his right knee condition. Employer responds, urging affirmance.

---

[3]The district director did not render any findings regarding whether the settlement agreement conforms to the specific requirements of Section 8(i)(1) of the Act. *See also* 20 C.F.R. §702.241 *et seq.*

Claimant contends that since the settlement agreement does not include any specific reference to his right knee injury it therefore does not cover said injury and he is entitled to medical benefits for that injury. Claimant specifically argues that the administrative law judge's reliance on the phrase that the "settlement includes all issues outstanding between the parties which were raised or could have been raised under the Act," is violative of the requirement of the Act and its implementing regulations that settlement agreements outline the nature and extent of the compromise with precision. Claimant maintains that the vague reference to "other injuries" in the settlement agreement is insufficient to discharge his entitlement to medical benefits for his right knee injury. Moreover, claimant asserts that the administrative law judge's reliance on the Board's decisions in *Porter v. Kwajalein Services, Inc.*, 31 BRBS 112 (1997), *aff'd on recon.*, 32 BRBS 56 (1998), *Olsen v. General Engineering & Machine Works*, 25 BRBS 169 (1991), and *Lambert v. Atlantic Gulf Stevedores*, 17 BRBS 68 (1985), is misplaced as those cases involve an issue that is not presented in this case, *i.e.*, whether settlements approved pursuant to Section 8(i) can be modified under Section 22 of the Act. Specifically, claimant avers that he does not seek to modify the agreement or avoid its consequences. Instead he argues that the settlement agreement lacks any specific language to evidence the parties' intentions to include compensation for his right knee injury in the agreement.

Initially, we agree with claimant that the administrative law judge's reliance on the aforementioned cases is misplaced, as they are inapposite to the issue presented herein. Claimant is not attempting to modify the terms of the settlement pursuant to Section 22. *Cf. Diggles v. Bethlehem Steel Corp.*, 32 BRBS 79 (1998)(cannot collaterally attack settlement through Section 22 proceedings). The fact that Section 22 cannot be used to modify a settlement thus does not address the issue presented, *i.e.*, whether the settlement agreement covers an injury not specifically listed in the agreement.

Next, we note that claimants are not permitted to waive their right to compensation except through settlements approved under Section 8(i). *See* 33 U.S.C. §§915,[4] 916; *see generally Henson v. Arcwel Corp.*, 27 BRBS 212 (1993). Section 8(i) of the Act, 33 U.S.C. §908(i)(1994),[5] provides for the discharge of

[4]Section 15(b) of the Act prohibits an employee from waiving his right to compensation and invalidates any attempts to do so. 33 U.S.C. §915(b).

[5]Section 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

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 International Oil Co., Inc.*, 22 BRBS 218 (1989); *see generally Abercrumbia v. Chaparral Stevedores*, 22 BRBS 18 (1988), *order on recon.*, 22 BRBS 18.4 (1989); 20 C.F.R. §702.241(g).

The implementing regulations state that "the settlement application shall be a self-sufficient document which can be evaluated without further reference to the administrative file."[6] 20 C.F.R. §702.242(a); *see generally Norton v. National Steel & Shipbuilding Co.*, 25 BRBS 79 (1991), *aff'd on recon. en banc,* 27 BRBS 33 (1993)(Brown, J. dissenting). The regulations continue by requiring "a brief summary of the facts of the case to include: a description of the incident, a description of the nature of the injury to include the degree of impairment and/or disability . . . ," 20 C.F.R. §702.242(a), as well as "the reason for the settlement, and the issues which are in dispute, if any." 20 C.F.R. §702.242(b)(2).

The regulations, operating in conjunction with the prohibitive mandate of Section 15(b), support claimant's contention that his claim for medical benefits related to his right knee injury is not covered by the terms of the settlement agreement. Initially, we note that there was no claim for medical benefits related to a right knee injury pending at the time the settlement agreement was signed and later approved by the district director. The claim in question is dated May 9, 1996, well

---

> 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 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).

[6]Based upon this specific language, as contained in Section 702.242(a), the Board has previously recognized that the use of parol evidence appears to be proscribed in the case of Section 8(i) settlement applications. *See McPherson v. National Steel & Shipbuilding Co.*, 24 BRBS 224, at 228, n. 2, (1991), *aff'd on recon. en banc,* 26 BRBS 71 (1992).

after the date the parties signed the settlement, December 12, 1995, and the date on which the district director approved the settlement, January 12, 1996. Thus, the claim for medical benefits for the injury to claimant's right knee cannot be included in the agreement as the claim was not yet in existence, notwithstanding claimant's awareness of pain in his right knee. *See Cortner*, 22 BRBS at 218. In any event, as claimant suggests, neither the settlement agreement nor the district director's subsequent Approval of Agreed Settlement makes any mention of a right knee injury. The agreement repeatedly refers to a left knee injury sustained on or about November 6, 1987, back injuries sustained on or about August 11, 1988, July 14, 1989, and June 26, 1995, and an injury to claimant's left groin, later diagnosed as a hernia, which occurred on or about April 19, 1994. In particular, the "Reason for Settlement" section of the agreement states:

> There is a present dispute between the parties as to the nature and extent of disability caused by Claimant's injuries, as well as the nature and extent of Claimant's continuing disability from his injuries. *Due to the nature of the injuries to Claimant's left knee, left groin and back*, the amount of compensation already paid to Claimant, the possibility of future compensation payments, and Claimant's desire to settle his claims so that he may move on to other employment, the parties have reached this settlement. (Emphasis added).

EX 6, Settlement Agreement at 5.

Similarly, the district director's Approval of Agreed Settlement refers only to "injuries of the left knee, back, [and] left groin, later diagnosed as a hernia," and notes that the agreement "effects a final disposition of the employee's claim, discharging the liability of the employer and/or insurance carrier for compensation benefits and medical benefits." EX 6. Consequently, it is clear from the settlement document itself that the parties did not intend to include claimant's claim for medical benefits related to his right knee in the settlement agreement executed on December 12, 1995, and subsequently approved by the district director on January 12, 1995.[7]

[7]As previously noted, the administrative law judge nevertheless found that the claim for medical benefits was included in the settlement agreement primarily because claimant's testimony establishes that he was fully aware of the right knee injury at the time he signed the settlement agreement. The administrative law judge therefore essentially concluded that the "claim was in existence" even though it had not been filed and claimant had not yet sought medical treatment for the injury. While substantial evidence supports the administrative law judge's finding that claimant was aware of a problem with his right knee at the time he signed the settlement, this alone does not defeat the requirement that a settlement agreement be a "self-sufficient document," and thus, *that the injuries covered therein be explicitly*

Thus, the administrative law judge's finding necessarily includes further reference to the administrative file, as exhibited by his consideration of claimant's complaints of right knee pain as far back as 1990 and/or 1991, which is expressly prohibited by the regulations. *See* 20 C.F.R. §702.242(a); *See McPherson v. National Steel & Shipbuilding Co.*, 24 BRBS 224, 228 n. 2, (1991), *aff'd on recon. en banc,* 26 BRBS 71 (1992).

---

outlined by the agreement. 20 C.F.R. §702.242(a).

Furthermore, we hold that the language relied upon by the administrative law judge in rendering his denial of benefits is too vague to support the proposition that claimant's right knee injury is covered by the agreement. Specifically, the statement that the "settlement includes all issues outstanding between the parties which were raised or *could have been raised* under the Act for these and *any other injuries* caused by the Employer," is insufficient to bring claimant's right knee injury within the agreement, as it fails to include, *inter alia*, a description "of the nature of the injury to include the degree of impairment and/or disability," or "a description of the medical care rendered to date of settlement," with regard to that right knee injury. 20 C.F.R. §702.242(a). Thus, claimant's knowledge of a problem involving his right knee at the time he entered into the settlement agreement is not controlling in the instant case, as inclusion of an additional injury not specified in the agreement violates the regulatory requirements for a proper settlement. 20 C.F.R. §702.242. Moreover, in order to be approved under Section 8(i), a settlement must be adequate, and the regulations require specific information relating to adequacy in addition to medical and other information explicitly addressing the settled injuries. 20 C.F.R. §702.242(b). As claimant had not sought treatment for his right knee or filed a claim for that injury, these requirements cannot be met. The costs of treatment are unknown, and therefore the settlement simply cannot be evaluated for adequacy with regard to injuries in addition to those listed therein. Thus, including an additional injury under the boilerplate "any other injuries caused by Employer" in the agreement renders it in violation of Sections 8(i) and 15(b), as it allows a waiver of additional compensation without proper approval. We therefore hold that the administrative law judge erred in finding that the settlement agreement discharges employer's liability for medical benefits related to claimant's right knee injury, and we vacate his denial of benefits and remand this case for a complete consideration of claimant's claim.[8]

Accordingly, the administrative law judge's Decision and Order Denying Benefits for a Right Knee Impairment is vacated, and the case remanded for further consideration consistent with this opinion.

SO ORDERED.

[8]We decline to address claimant's contentions that the evidence of record is sufficient to establish that his right knee condition is work-related as this issue has yet to be addressed by the administrative law judge. *See generally Boyd v. Ceres Terminals*, 30 BRBS 218 (1997); *Shaw v. Todd Pacific Shipyards Corp.*, 23 BRBS 96 (1989).

BETTY JEAN HALL, Chief
Administrative Appeals Judge

I concur:

ROY P. SMITH
Administrative Appeals Judge

McGRANERY, Administrative Appeals Judge, concurring:

I agree with the majority's determination that the administrative law judge erred in denying claimant's request for medical benefits for a right knee impairment, but I take a different and shorter route to arrive at this conclusion. The administrative law judge determined that because claimant was aware of his work-related, right knee injury at the time of settlement, he is precluded from recovering medical expenses for treatment of the right knee by specific language in the settlement agreement:

> "Settlement includes all issues outstanding between the parties which were raised or **could have been raised** under the LHWCA for these and **any other injuries** caused by the Employer." (Emphasis in Decision and Order at 6).

The regulations make clear that settlements may encompass only claims for compensation or only claims for medical benefits or both. *See* 20 C.F.R. §702.243(d). Although claimant had a work-related injury at time of settlement, December 12, 1995, he was unaware until December 21, 1995 that he needed medical treatment for it. Hence, the settlement could not have encompassed the claim for medical treatment of the right knee because that claim was not in existence at the time of settlement. 20 C.F.R. §702.241(g).

In sum, I agree with the majority's holding that the administrative law judge erred in finding that the settlement agreement discharged employer's liability for medical benefits related to claimant's right knee injury, that the denial of benefits should be vacated and the case remanded for full consideration of the claim.

REGINA C. McGRANERY
Administrative Appeals Judge