In the Matter of the Compensation of
**DOROTHY J. CARNES, Claimant**
WCB Case No. 04-06674
ORDER ON REVIEW
Unrepresented Claimant
Johnson Nyburg & Andersen, Defense Attorneys

Reviewing Panel: Members Biehl and Langer.

Claimant, *pro se*, requests review of Administrative Law Judge (ALJ) Spangler's order that declined to set aside her 2001 Disputed Claim Settlement (DCS) and Claim Disposition Agreement (CDA). On review, the issue is the validity of the previously approved agreements.

We adopt and affirm the ALJ's order with the following supplementation.[1]

In declining to set aside the DCS and CDA, the ALJ rejected claimant's argument that her former attorney misled or coerced her into signing the agreements. The ALJ found that there was no credible or colorable evidence to support any of claimant's allegations or requests for relief. Having reviewed this record, we agree with the ALJ's reasoning and conclusions.[2] In addition, we make the following comments.

A proposed CDA shall be approved unless the Board finds that the proposed disposition is unreasonable as a matter of law. ORS 656.236(1)(a)(A). Moreover, ORS 656.236(2) provides that, once approved, a CDA is not subject to further review. In addition, ORS 656.236(7) provides that carriers who are parties to a CDA shall not be joined as parties in further proceedings to determine responsibility (except medical services) and that no order may alter the carrier's obligations as set forth in the approved CDA.

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[1] Inasmuch as claimant is unrepresented, she may wish to consult with the Workers' Compensation Ombudsman, whose job it is to assist injured workers in such matters. She may contact the Workers' Compensation Ombudsman, free of charge, at 1-800-927-1271, or write to:

WORKERS' COMPENSATION OMBUDSMAN
DEPT OF CONSUMER & BUSINESS SERVICES
PO BOX 14480
SALEM, OR 97309-0405

[2] We acknowledge claimant's correction of her age at the time of the hearing. We further interpret the ALJ's finding that claimant appeared a credible witness to mean that, based on her demeanor, claimant sincerely believed her allegations to be true.

Accordingly, the statutory provisions concerning CDAs make clear that, if there is an allegation regarding intentional misrepresentation of a material fact, such an allegation must be raised before the Board's approval of the CDA or within 10 days of the approval pursuant to OAR 483-009-0035. In this case, claimant raised such an allegation several years after Board approval of the CDA. Claimant's request for relief is untimely with regard to the CDA because the CDA is a final, unappealable order. It follows that the ALJ/Board lacks authority to set aside the 2001 Board-approved CDA.[3]

With regard to the DCS, we find that this record does not establish grounds on which the DCS should be set aside. In other words, the record does not contain evidence of misrepresentation, fraud or other illegal activity. Thus, there are no extraordinary circumstances to set aside the DCS. *See Floyd D. Gatchell*, 48 Van Natta 467 (1996) (setting aside an approved DCS is an extraordinary remedy to be granted sparingly in the most extreme circumstances).

Claimant argues, however, that the DCS was invalid because it pertained to a bilateral carpal tunnel condition, even though no claim had been filed. We disagree.

A claim for bilateral carpal tunnel was made, denied and a hearing request was filed within the DCS itself. Accordingly, we conclude that the DCS was not invalid on this ground.

Claimant also contends that the DCS is invalid because she signed the CDA at the same time as she signed the DCS, even though the DCS stated that no CDA had been filed for approval of the Board. The purpose of this provision in a DCS is to alert the *ALJ* of the suspension of all proceedings under ORS 656.236(1)(a) until approval of the CDA. That suspension becomes effective when a CDA has been filed with the Board.

Here, the DCS was approved on July 2, 2001 by an ALJ, but the CDA was not filed with the Board until July 6, 2001. Therefore, the provision in the DCS was accurate and, as such, not misleading or illegal.

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[3] Alternatively, even if we had authority to set aside the CDA, we would not do so because the record does not support a conclusion that the CDA was the result of an intentional misrepresentation of a material fact. In other words, the CDA conformed to Board rules and was not unreasonable as a matter of law.

Claimant also argues that the DCS is invalid because it precluded medical services related to the accepted condition. We disagree.

The DCS upholding the "current condition" denial made it difficult *factually* to establish that medical services for conditions denied in 2001 are causally related to accepted conditions. However, claimant is not precluded from making such a claim based on her original accepted condition and attempting to establish the compensability of medical services. In sum, the provision that claimant objects to does not lead to a conclusion that the DCS was illegal and should be overturned.

Claimant also objects to the "settlement and release agreement." Such an agreement appears to have been part of the entire transaction. However, the ALJ and Board have no authority to approve such an agreement and likewise have no authority to set the agreement aside. *See Jean P. Elliot*, 51 Van Natta 1364 (1999) (because the Board's authority is confined to workers' compensation matters under ORS Chapter 656, approval of a settlement does not extend to any matters in the agreement that pertain to employment rights).

Finally, to the extent that claimant raises allegations about the quality of her former attorney's representation, those are matters between them and not appropriate for this forum to resolve. *See Becky L. Degenhardt*, 54 Van Natta 1189 (2002) (the Board is not the appropriate forum for determining the adequacy of counsel). Instead, the Board's authority pertains to whether there are grounds to set aside the 2001 DCS and CDA. For the reasons previously expressed, no such grounds have been established.

## ORDER

The ALJ's order dated March 28, 2005 is affirmed.

Entered at Salem, Oregon on July 27, 2005