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In the Matter of the Compensation of  
**JACK A. STRUBEL, Claimant**  
WCB Case No. 15-02810  
ORDER ON REVIEW  
Unrepresented Claimant  
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Lanning and Johnson.

Claimant, *pro se*,<sup>1</sup> requests review of Administrative Law Judge (ALJ) Naugle's order that declined to set aside a previously approved Disputed Claim Settlement (DCS). On review, the issue is the validity of the DCS.

We adopt and affirm the ALJ's order with the following summary and supplementation.

In August 2013, claimant sustained a work injury, for which the SAIF Corporation ultimately accepted a right elbow comminuted radial head fracture, right elbow tip of the coronoid process of the ulna fracture, right rotator cuff sprain/strain, right ulnar neuropathy, right cervical strain, and right trapezius strain. (Exs. 14, 26).

In June 2015, SAIF denied "nondisplaced tear of the posterior superior labrum right shoulder, tear of the posterior superior labrum right shoulder, right shoulder paralabral cyst associated with the posterior superior labral tear, right shoulder supraspinatus tendinopathy, and left heel contusion." (Ex. 41). Claimant timely appealed that denial.

On November 30, 2015, following mediation, claimant (who was represented by an attorney) and SAIF agreed to a DCS of \$19,400, which resolved all issues "raised or raisable" arising out of the denied treatment, conditions, disability, injury, or occupational disease. (Exs. 43, 44). The settlement involved the parties' agreement that its terms were reasonable and drafted by both of them.

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<sup>1</sup> Because claimant is unrepresented, he may wish to consult the Ombudsman for Injured Workers. He may contact the Ombudsman, free of charge, at 1-800-927-1271, or write to:

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

(Ex. 44-7). Finally, claimant certified that he had “read the entirety” of the DCS and “fully [understood] the meaning and effect, present and future,” and that his questions, “if any, [had] been fully and completely answered by [his] attorney, and that no further questions remain[ed].” (*Id.*) The ALJ approved the DCS on December 1, 2015. (Ex. 45).

On December 4, 2015, the employer issued claimant a check for the DCS proceeds, which he endorsed. (Ex. 46). The check posted to his account on December 8, 2015. (*Id.*)

On December 29, 2015, claimant requested Board review of the ALJ’s approved order. (Exs. 47, 48, 50, 54). He sought rescission of the DCS alleging he had left arm damage/chronic pain, left leg nerve damage, and a head/brain injury, all of which he attributed to his work injury. (Exs. 47, 52). He further indicated that he had not known what he was signing, that he had chronic pain over his entire body, and that he was “going to be disabled.” (Ex. 53). We remanded the case to the ALJ to consider claimant’s contentions. *Jack A. Strubel*, 68 Van Natta 408 (2016).

At hearing, claimant testified that he had signed the DCS under “duress.” (Tr. 5). Specifically, he asserted that he had financial difficulties after being wrongfully jailed. (*Id.*) In addition, he contended that Dr. Blake, his treating physician, caused him to be under “duress” because he focused on treating his elbow, rather than other conditions. (Tr. 7). He further testified that, after approximately four hours of mediation, his pain was so great that he would have signed anything to leave, but also stated that he did not remember the mediation. (Tr. 8). He believed that he would get medical help more quickly through the Oregon Health Plan, rather than SAIF. (Tr. 5-6). He explained that, although he was represented by an attorney during the mediation process, he had no idea that he was signing away his rights. (Tr. 9). He thought that SAIF had paid extra compensation for injuries that it said that he could not prove, and he denied having “buyer’s remorse” for signing the DCS. (Tr. 7-8).

Thereafter, the ALJ declined to set aside the DCS. Referring to the grounds for setting aside a DCS, the ALJ determined that claimant had not shown extreme circumstances that would justify such an extraordinary remedy. *See Floyd D. Gatchell*, 48 Van Natta 467 (1996), *citing Mary Lou Claypool*, 34 Van Natta 943 (1982) (the grounds for setting aside a DCS include mistake, inadvertence, surprise, excusable neglect, fraud, misrepresentation, or other misconduct by the adverse party).

On review, claimant reiterates that he signed the DCS under “duress” due to financial troubles and physical pain. In addition, he asserts that Dr. Blake missed medical conditions that the Oregon Health Plan providers were able to diagnose.<sup>2</sup>

For the following reasons, we agree with the ALJ’s determination that grounds for setting aside the previously approved DCS have not been established.

Under ORS 656.289(4), parties may resolve their bona fide disputes regarding the compensability of a denied claim pursuant to a DCS. It is well established that settlements are to be encouraged within the limits of the statute and, once approved, they should be set aside only if they clearly violate the statute. *Kasper v. SAIF*, 93 Or App 246, 250 (1988). We regard setting aside an approved settlement to be an extraordinary remedy to be granted sparingly in the most extreme circumstances. *See Dorothy J. Carnes*, 57 Van Natta 2003, 2004 (2005); *Pruitt Watson*, 45 Van Natta 1633 (1993). Absent a showing of extreme circumstances, we have declined to set aside a DCS. *See Carnes*, 57 Van Natta at 2004; *Floyd D. Gatchell*, 48 Van Natta 467 (1993).

Here, claimant asserts that he was under “duress” to sign the DCS and that he was in such pain after four hours that he would have signed anything to leave.<sup>3</sup> The parties and their respective legal counsel signed the DCS on November 30, 2015, and the ALJ approved it on December 1, 2015. The settlement proceeds were paid on December 4, 2015, and claimant cashed/deposited the DCS check on December 8, 2015. During the 8-day period between claimant signing the DCS and cashing his check, there is no indication that he had any dissatisfaction with the settlement. Instead, he did not seek disapproval of the DCS until December 29, 2015, more than four weeks after he signed the document and nearly three weeks after he cashed/deposited the settlement check. Claimant’s acceptance of the DCS monies (some eight days after he signed the settlement) confirms that he had over a week to reconsider his decision to accept the employer’s offer and still chose to proceed with the terms of the settlement without taking further steps.

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<sup>2</sup> Claimant also referenced the criminal statute for “coercion” at ORS 163.275.

<sup>3</sup> In presenting his position, claimant refers to additional evidence that was not submitted at hearing. We have confined our review to those exhibits that the ALJ admitted into the record. ORS 656.295(3), (5). To the extent that claimant’s submissions refer to materials that were not admitted as evidence, those portions of his arguments have not been considered.

After reviewing this record, we conclude that these circumstances do not rise to the level of “extraordinary” necessary to set aside the previously approved DCS. *See Charles M. Partlow*, 69 Van Natta 41 (2017) (the claimant’s delay in seeking disapproval of a previously approved DCS for more than five weeks after signing the document and two weeks after cashing/depositing the settlement checks did not support a conclusion that “extraordinary” circumstances existed to set aside the DCS). For the reasons previously expressed, and those contained in the ALJ’s order, no such grounds have been established. Consequently, we affirm the ALJ’s decision.

ORDER

The ALJ’s order dated February 24, 2017 is affirmed.

Entered at Salem, Oregon on July 6, 2017