

the temporary total disability compensation and medical benefits previously paid. Language in the settlement indicated that the settlement was for "any and all other industrial accidents arising out of and in the course of claimant's employment with respondent up to the date of this hearing." This language is contained in the settlement hearing at more than one location.

Unbeknownst to the attorneys of record at the settlement hearing and to the insurance company representing respondent, claimant had alleged an additional accidental injury on April 14, 1995, for which he was receiving benefits at the time of the settlement hearing. A new claim was filed by claimant with the Workers Compensation Division for this April 1995 injury in Docket No. 201,867. That Docket Number is not before the Appeals Board at this time.

Claimant requests that the settlement in Docket No. 184,315 be set aside alleging mutual mistake of the parties when considering the April 1995 date of accident and the all inconclusive language of the settlement.

K.S.A. 1990 Supp. 44-528 grants review and modification of:

"Any award or modification thereof agreed upon by the parties, except lump-sum settlements approved by the director or administrative law judge, whether the award provides for compensation into the future or whether it does not, may be reviewed by the director for good cause shown upon the application of the employee, employer, dependent, insurance carrier or any other interested party."

K.S.A. 1990 Supp. 44-528 clearly states that lump sum settlements are not subject to review and modification under that statute.

K.S.A. 44-531 states in part:

"(a). . . Upon paying such lump sum the employer shall be released and discharged of and from all liability under the workmen's compensation act for that portion of the employer's liability redeemed under this section."

It is clear the legislature frowns upon re-opening or setting aside lump sum settlements once they have been approved by the administrative law judge and/or the Director.

Claimant argues that severe prejudice will result if he is not allowed to set aside this settlement as it, in some way, will impede his ability to proceed in Docket No. 201,867. A review of the Award of Administrative Law Judge Frobish of May 16, 1996, shows the Administrative Law Judge distinguished between the issue in this matter and any defenses raised by the respondent in Docket No. 201,867. The Administrative Law Judge specifically stated the defense of accord and satisfaction raised by the respondent in Docket No. 201,867 should properly be addressed in that case.

The Appeals Board finds no reason to set this matter aside. The issue dealing with whether or not claimant's April 1995 injury has been settled is a matter to be taken up in Docket No. 201,867.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Jon L. Frobish dated May 16, 1996, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Steve Brooks, Liberal, KS
Kerry McQueen, Liberal, KS
Kenneth S. Johnson, Administrative Law Judge
Philip S. Harness, Director