U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 27 February 2007

Case No.: 2006-LHC-01916 and 2007-LHC-00151

OWCP No.: 5-117898 and 5-120129

In the matter of
A.R.
Claimant,

v.

MARINE REPAIR SERVICE,
Employer,

and

SIGNAL MUTUAL INDEMNITY
c/o SCHAFFER,
Carrier.

ORDER GRANTING RESPONDENT'S MOTION TO REMAND

On January 25, 2007, Respondent's counsel filed a Motion to Remand the case to the District Director's level for consideration of Section 908(f) relief. By response filed January 31, 2007, Claimant's counsel objected to the remand on several grounds: (1) the Administrative Law Judge has the authority to conduct an informal conference in this case; and (2) the Employer is not prejudiced by submitting an 8(f) application directly to the Administrative Law Judge. The Director has not responded to the Motion.

Review of the administrative file indicates that the District Director declined to hold an informal conference on or about July 14, 2006. On August 8, 2006, Claimant's counsel requested the case be forwarded for a formal hearing and indicated the sole issue was "Setting of an informal conference by the Administrative Law Judge regarding permanent total disability benefits and medical causation with regard to claimant's depression." [Form LS-18] This original claim was forwarded to the Offices of Administrative Law Judges on August 22, 2006 and assigned case number 2006-LHC-01916. Subsequently, Claimant's counsel requested the case be forwarded for a formal hearing where the sole issue identified was "Issue of Informal Conference before the Administrative Law Judge on the issue of permanent total disability benefits." [Claimant's September 29, 2006, Form LS-18] This case was forwarded to the Office of Administrative Law Judges on October 19, 2006 and assigned case number 2007-LHC-00151.

No informal conference was held on either claim by the District Director under the authority set forth in 20 CFR §§ 702.311 through 702.316. Claimant's counsel mistakenly asserts that this Administrative Law Judge has authority to hold an informal conference on the merits of the case and sites 20 CFR § 702.134 as authority to do so. However, 20 CFR § 702.134 refers generally to "Payment of claimant's attorney's fees in disputed claims." 20 CFR § 702.134(b) contains the language sited by Claimant's counsel and refers to non-controverted claims, under 20 CFR § 702.231, where the employer or carrier makes payment of compensation without an award and "thereafter a controversy develops over the amount of additional compensation, if any, to which the employee may be entitled …" The section specifically applies to additional payments to the voluntary payments made under the provisions of § 914(a) and § 914(b) of the Act. It does not refer to voluntary payments which are stopped or suspended under § 914(h) of the Act.

In this case Claimant's counsel stated in a letter dated September 18, 2006, that "the employer recently terminated the claimant's benefits based on a Labor Market Survey." The record indicates that the Employer "denied the claimant was permanently and totally disabled as a result of this injury and did not file an LS-18 because there was no pre-existing condition." The District Director had earlier responded to Claimant's counsel's request for "an informal conference on the issues of a permanent total disability and medical causation" by letter dated August 15, 2006, in which he stated "On June 14, 2006, I denied [Claimant's] claim for permanent total disability. If you send me your supporting evidence for the medical causation I will review and make a recommendation on that. Should you want to go directly to the OALJ, contact me at once and your LS-18 will be forwarded."

"With the exception of those duties imposed by §§ 919(d) [involving hearings before an Administrative Law Judge in accordance with the Administrative Procedure Act], 921(b) [involving the Benefits Review Board] and 941 [involving safety rules and regulations], the Secretary of Labor has delegated all responsibilities of the Department with respect to the administration of the LHWCA to the Director of the Office of Workers' Compensation Programs (OWCP)." … The Act "assigns four basic areas of responsibility to the Director: (1) supervising, administering, and making rules and regulations for calculation of benefits and processing claims; (2) supervising, administering, and making rules and regulations for provision of medical care to covered workers; (3) assisting claimants with processing claims and receiving medical and vocational rehabilitation; and (4) enforcing compensation orders and administering payments to and disbursements from the special fund established by the Act for the payment of certain benefits." … "The Director is not the designated champion of employees within this statutory scheme. To the contrary, one of [the Director's] principal roles is to serve as the broker of informal settlements between employers and employees." *Director, OWCP v. Newport News Shipbuilding and Dry Dock Co.*, 514 US 122, 115 S.Ct. 1278 at 1283, 1285, 1286 (1995) Holding an informal conference pursuant to 20 CFR Chapter VI, Subpart C is within the sound discretion of the District Director and is not subject to review by an administrative law judge; and "there is no requirement that such an informal conference must be held before the case may be referred to the Office of Administrative Law Judges." *Matthews v. Jeffboat, Inc.,* 18 BRBS 185, 187 (1986)

In this case, the provisions of 20 CFR § 702.134(b), regarding an informal hearing at the administrative law judge level, do not apply and the case was to be set for a formal hearing.

Prior to the formal hearing being scheduled, Respondent submitted this Motion to Remand. In view of the Director's willingness to consider the issues of Claimant's permanent total disability and medical causation upon submission of appropriate evidence, the same material that would have been required at a formal hearing, as well as the Director's need to evaluate the issue related to Section 908(f), it is appropriate that this case be remanded to the District Director.

ORDER

It is hereby **ORDERED** that the Respondent's **Motion to Remand is GRANTED**. Accordingly, the subject cases are **REMANDED** to the District Director for appropriate action. **The Parties are ORDERED** to submit appropriate documents to the District Director within 30 days of this Order and to keep the District Director apprised of document submission progress. Should the District Director determine that a genuine dispute of fact or law, which cannot be disposed of informally, still exists after 60 days of this Order, the Director may return the case to the Office of Administrative Law Judges for formal hearing pursuant to 20 CFR, Chapter VI, Subpart C.

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Alan L. Bergstrom
Administrative Law Judge

ALB/jcb