

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



BRB No. 20-0179
OWCP No. 05-317298

KRISTOPHER V. WORRELL)	
)	
Claimant-Respondent)	
)	
v.)	
)	
VIRGINIA INTERNATIONAL)	
TERMINALS, LLC)	
)	
and)	
)	
SIGNAL MUTUAL INDEMNITY)	DATE ISSUED: 07/02/2020
ASSOCIATION, LIMITED)	
)	
Employer/Carrier-)	
Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	ORDER

Employer and its carrier appeal the January 9, 2020 Order Compelling Authorization and Furnishing of Medical Treatment (OWCP No. 05-317298) of District Director Theresa A. Magyar rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §901 *et seq.* (Act). Employer has filed its Petition for Review and brief, contending the district director erred in ordering Employer "to authorize and pay for all physical therapy with Wardell Orthopaedics under the direction of Dr. Arthur Wardell." Employer contends the selection of Dr. Wardell's physical therapy practice is inappropriate because it controverts, as unnecessary to treat Claimant's work injury, the claim for the type of physical therapy Dr. Wardell recommended. Employer further asserts it is entitled to select Claimant's physical

therapist. The Director, Office of Workers' Compensation Programs, responds, moving that Employer's appeal be dismissed as premature because the district director has not acted on Employer's timely-filed motion for reconsideration. Employer filed a reply in which it asserts the case should be forwarded to the Office of Administrative Law Judges (OALJ) for a formal hearing on the necessity of physical therapy after the district director acts on its motion for reconsideration, citing the Board's recent Order in *Sykes v. Virginia Int'l Terminals, LLC*, BRB No. 20-02024 (June 25, 2020).

We dismiss Employer's appeal for two reasons. First, its appeal was prematurely filed on February 7, 2020, while its January 15, 2020 motion for reconsideration remained pending with the district director.¹ Under 20 C.F.R. §802.206(f), an appeal filed while a timely motion for reconsideration is pending must be dismissed. *Aetna Casualty & Surety Co. v. Director, OWCP*, 97 F.3d 815, 30 BRBS 81(CRT) (5th Cir. 1996). In order to preserve its rights, a party must file a new appeal within 30 days of the issuance of an order disposing of the motion for reconsideration. 20 C.F.R. §§802.206(d), (e).

Second, Employer's appeal raises questions of fact regarding the necessity of Claimant's medical treatment, which an administrative law judge must address if the parties are not in agreement at the conclusion of the informal proceedings. *Weikert v. Universal Maritime Serv. Corp.*, 36 BRBS 38 (2002); *Sanders v. Marine Terminals Corp.*, 31 BRBS 19 (1997) (Brown, J., concurring); *see also Teer v. Huntington Ingalls, Inc., Pascagoula Oper.*, 53 BRBS 5 (2019); 20 C.F.R. §702.315. In such circumstances, the district director must refer the case to the OALJ at the request of any party. *Ingalls Shipbuilding, Inc. v. Asbestos Health Claimants*, 17 F.3d 130, 28 BRBS 12(CRT) (5th Cir. 1994).

¹ In its January 15, 2020 Motion for Reconsideration, Employer challenged the necessity of physical therapy to treat Claimant's injury. No informal conference was held on this issue, and Employer's motion currently remains pending before the district director.

Accordingly, we dismiss Employer's appeal with prejudice.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge