



BRB No. 21-0179

ROBERT MOCKEL)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
SSA TERMINALS, LLC)	
)	
and)	
)	
HOMEPORT INSURANCE COMPANY)	DATE ISSUED: 05/25/2021
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	ORDER on
)	MOTION to DISMISS

Claimant appeals Claims Examiner Christopher M. Green's December 3 and 23, 2020 letters (OWCP No. 13-106487) denying Claimant's request for an order granting a change in his treating physician pursuant to 33 U.S.C. §907(b). The Director, Office of Workers' Compensation Programs (the Director), has filed a motion to dismiss Claimant's appeal as premature. Claimant responds, opposing the Director's motion.

Claimant injured his back while working for Employer on September 24, 2010, and May 20, 2015. In both instances, he received treatment from Dr. David Chow, which Employer authorized. Administrative Law Judge Steven B. Berlin, in his Decision and

Order dated June 24, 2020, awarded Claimant medical and disability benefits.¹ In resolving the claim, Judge Berlin accorded little weight to Dr. Chow's opinions in part because he "was not a treating physician within the meaning of *Amos v. Dir.*, *OWCP*, 153 F.3d 1051, 1054 (9th Cir. 1998), *amended by* 164 F.3d 480 (9th Cir. 1999), *cert. denied*, 528 U.S. 809 (1999)."² Decision and Order at 40-41. On July 31, 2020, Claimant requested Employer's consent to "seek a new doctor for his medical treatment" due to "the history of treatment as outlined in Judge Berlin's" decision. In a memorandum of informal conference dated October 29, 2020, the claims examiner "recommended that the claimant has shown good cause to change his [primary treating physician]," Cl. Ex. 5, which Employer rejected. Cl. Ex. 6. Claimant thereafter requested the district director issue an order granting his request for a change in treating physician. Cl. Ex. 7.

In his December 3, 2020 letter, the claims examiner acknowledged his written recommendation dated October 29, 2020, but also noted that, "for many reasons," Employer has "been persistent" in its opposition to Claimant's request to change treating physicians. He thus stated:

A general factual dispute exists as to whether the claimant has established good cause to change treating physicians. A claim for medical benefits that raises factually disputed issues are [*sic*] to be resolved by a trier of fact at the Administrative Law Judge level.

Cl. Ex. 11 at 2. Consequently, the claims examiner concluded Claimant's "request for a Section 7 Order is denied." *Id.* In his December 20, 2020 letter, the claims examiner denied Claimant's request for reconsideration. He reiterated his position that "because a general factual dispute exists as to whether the [C]laimant has established good cause to change treating physicians, the issue is to be resolved by a trier of fact at the Administrative Law Judge level." Cl. Ex. 14 at 2.

¹ Claimant appealed this decision to the Board. His appeal, BRB No. 20-0501, remains pending, but resolution of that case is not necessary for the disposition of the Director's motion to dismiss.

² The administrative law judge found Dr. Chow saw Claimant on a limited number of occasions and did not discuss Claimant's condition with the other physician and nurse practitioners who provided most of his care. Decision and Order at 40-41.

We agree with the Director’s position that we must dismiss Claimant’s appeal because the district director has not yet issued a final order that resolves Claimant’s request for a change in physician. See 33 U.S.C. §919(e) (a “compensation order” is one that rejects the claim or makes an award); 33 U.S.C. §921(a) (“compensation orders” become final unless appealed to the Board); see *Maria v. Del Monte/Southern Stevedore*, 22 BRBS 132 (1989) (en banc); *Anweiler v. Avondale Shipyards, Inc.*, 21 BRBS 271 (1988). Section 802.201(a) of the Board’s regulations provides “[a]ny party or party-in-interest adversely affected or aggrieved by a decision or order . . . may appeal a decision or order of an administrative law judge or [district director]. . . .” 20 C.F.R. §802.201(a) (emphasis added); see also 33 U.S.C. §907(b), (c)(2); 20 C.F.R. §§702.206, 702.407 (district director has authority to order a change in a claimant’s physician); *Jackson v. Universal Serv. Maritime Corp.*, 31 BRBS 103 (1997) (Brown, J., concurring) (district director has broad discretion in considering whether to order a change in physicians). Thus, the claims examiner’s letters acknowledging a dispute between the parties are not appealable to the Board. *Craven v. Director, OWCP*, 604 F.3d 902, 44 BRBS 31(CRT) (5th Cir. 2010) (memorandum of informal conference not appealable).

Accordingly, we grant the Director’s motion to dismiss Claimant’s appeal of the claims examiner’s letters.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge