

MILIVOJ RACUNICA)
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 Claimant-Petitioner)
)
 v.)
)
 WORLDWIDE DIESEL POWER,) DATE ISSUED: Aug. 6, 2014
 INCORPORATED)
)
 and)
)
 AMERICAN INTERSTATE INSURANCE)
 COMPANY)
)
 Employer/Carrier-)
 Respondents) DECISION and ORDER

Appeal of the Order Dismissing Case of Christine L. Kirby, Administrative Law Judge, United States Department of Labor.

Milivoj Racunica, Jacksonville, Florida, *pro se*.

Richard M. Stoudemire (Saalfield, Shad, Stokes, Inclan, Stoudemire & Stone, PA), Jacksonville, Florida, for employer/carrier.

Before: HALL, Acting Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, appearing without legal representation, appeals the Order Dismissing Case (2012-LHC-01928) of Administrative Law Judge Christine L. Kirby rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). In an appeal by a claimant without legal representation, we will review the administrative law judge's findings of fact and conclusions of law to determine if they are supported by substantial evidence, rational, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 20 C.F.R. §802.211(e). If they are, they must be affirmed. *Id.*

On January 5, 2012, claimant allegedly suffered injuries to his tailbone, low back and neck while working for employer. Claimant, who was then represented by counsel, filed a claim for benefits under the Act on June 5, 2012. The case was referred to the Office of Administrative Law Judges (OALJ) on August 15, 2012. On August 29, 2012, claimant's counsel withdrew his representation of claimant. Claimant thereafter appeared at a formal hearing before Administrative Law Judge Levin on April 11, 2013, without legal representation.¹ Judge Levin, without objection from employer's counsel, granted claimant a continuance to seek an attorney; he informed the parties that a new notice of hearing would be forthcoming. *See* April 11, 2013 Tr. at 18. On April 18, 2013, Judge Levin issued an Order Granting Continuance to afford claimant time to obtain an attorney.

The case was reassigned to Administrative Law Judge Kirby (the administrative law judge) on May 30, 2013. On June 17, 2013, the administrative law judge issued an Order Requiring Status Update stating that, as it was unclear whether claimant was pursuing his claim, the parties were to file a status update within fourteen days. On July 1, 2013, employer responded that, as it had been unsuccessful in its attempts to contact claimant, it was unaware of claimant's intentions. Claimant did not respond to the administrative law judge's Order.

On July 24, 2013, the administrative law judge issued an Order to Show Cause wherein the parties were ordered to show cause within fourteen days why the claim should not be dismissed for failure to prosecute. The administrative law judge noted that her staff had been unable to contact claimant. On November 5, 2013, the administrative law judge issued an Order Dismissing Case. The administrative law judge stated that claimant had not responded to either of her two prior orders and that her staff had been unsuccessful in their attempts to contact claimant. Thus, she dismissed claimant's claim without prejudice for failure to prosecute it.

Claimant appeals the administrative law judge's Order Dismissing Case. In his letter to the Board, claimant states he has obtained additional medical evidence and now has an attorney. Claimant states he would like to schedule another formal hearing. Employer responds, urging the Board to affirm the administrative law judge's dismissal of claimant's claim.

In this case, the administrative law judge dismissed claimant's claim without prejudice. *See* Order at 2. The effect of the dismissal without prejudice was only to

¹ As claimant does not speak English, he was accompanied at the formal hearing by a family friend who acted as his translator.

remove claimant's claim from the hearing docket of the OALJ; a dismissal without prejudice does not operate as an adjudication of the claim on its merits. *See* Fed. R. Civ. P. 41(b); 29 C.F.R. §18.1. A claim under the Act which was timely filed and which has not been closed by an order awarding benefits or denying the claim remains open for adjudication. *See Intercountry Constr. Co. v. Walter*, 422 U.S. 1, 2 BRBS 3 (1975); *cf. Taylor v. B. Frank Joy Co.*, 22 BRBS 408 (1989) (discussing dismissal with prejudice). Claimant's claim was not denied or dismissed with prejudice. Therefore, the claim remains pending before the district director. The district director should determine the posture of the parties and if any informal proceedings are warranted.² *See* 20 C.F.R. §§702.311-319. The parties remain entitled to a formal hearing. *See generally Ingalls Shipbuilding, Inc. v. Asbestos Health Claimants*, 17 F.3d 130, 28 BRBS 12(CRT) (5th Cir. 1994).

The administrative law judge's Order does not contain any findings of fact or conclusions of law adverse to claimant. None of claimant's rights under the Act have been impaired. Thus, there is no substantial issue of law or fact for the Board to decide and we dismiss claimant's appeal. *See* 33 U.S.C. §921(b)(3); *Green v. Ingalls Shipbuilding, Inc.*, 29 BRBS 81 (1995); *Parker v. Ingalls Shipbuilding, Inc.*, 28 BRBS 339 (1994).

² It is unclear from the record before the Board whether any informal proceedings were held previously.

Accordingly, claimant's appeal is dismissed.

SO ORDERED.

BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge