

D. B.)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
EAGLE MARINE SERVICES, LIMITED)	
)	
Self-Insured)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS’ COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR)	DATE ISSUED: 02/27/2009
)	
Respondent)	
)	
ILWU-PMA WELFARE PLAN)	
)	
Party-in-Interest)	ORDER on RECONSIDERATION

Claimant has filed a timely motion for reconsideration of the Board’s Decision and Order in this case, *D.B. v. Eagle Marine Services, Ltd.*, BRB No. 08-0136 (Sept. 29, 2008). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Employer has filed a response brief urging rejection of claimant’s motion. Claimant has filed a reply brief.¹

To briefly recapitulate the facts pertinent to claimant’s motion, the ILWU-PMA Welfare Plan (the Plan) paid claimant \$5,376.43 in disability benefits for his work injury. The Plan also paid medical benefits totaling \$4,918.53. Subsequently, employer accepted liability under the Act for claimant’s work-related injury. Thereafter, the Plan accepted employer’s offer of \$8,100 in satisfaction of its prior payments of disability and medical benefits to claimant, and employer paid the Plan accordingly. Employer also paid claimant an additional \$1,654.50 in compensation under the Act based on its using a

¹ The Director, Office of Workers’ Compensation Programs (the Director), responded to claimant’s initial appeal. The Director has not responded to claimant’s motion for reconsideration.

higher average weekly wage than that computed by the Plan and by paying claimant for periods he was unable to work but did not receive any compensation from the Plan. Claimant objected to employer's direct payment to the Plan because the Plan did not follow the procedures set forth in Section 17 of the Act and Section 702.162 of the regulations for establishing a statutory lien, contending that, in the absence of such a lien, employer remains fully liable to him for all compensation benefits due under the Act. 33 U.S.C. §917; 20 C.F.R. §702.162.

In his decision, the administrative law judge rejected claimant's contention. The administrative law judge found that the informal handling of the Plan's lien, which, he stated, vested when the Plan paid claimant benefits, did not contravene the provisions of the Act. Thus, the administrative law judge rejected claimant's claim that employer remains liable to claimant for all compensation benefits due under the Act and that employer should be denied a credit against its compensation liability for the payment it made to the Plan.

In its decision on claimant's appeal, the Board vacated the administrative law judge's grant of a credit to employer of the \$5,376.43 it had paid to the Plan.² The Board held that as the Plan did not comply with the statutory and regulatory procedures under the Act for obtaining a lien pursuant to Section 17, the administrative law judge erred in finding that the Plan possessed an enforceable lien. *D.B.*, slip op. at 3-4. The Board further held that employer is not entitled to credit its payment to the Plan against its compensation liability to claimant. The Board held that as the Plan did not perfect its lien, employer was required, pursuant to Section 14(a) of the Act, 33 U.S.C. §914(a), to pay claimant directly any compensation owed. *Id.* at 5-6.

In his motion for reconsideration, claimant objects to the Board's remanding the case to the district director. In its decision, the Board stated:

[W]e agree with the Director that this case must be remanded to the district director for initial action on this claim for benefits. The district director should accept a lien application from the Plan, 20 C.F.R. §702.162(b), and, if the Plan is a qualifying trust fund, determine the amount of and authorize

² Claimant did not challenge employer's payment to the Plan of the \$4,918.53 the Plan had paid to claimant for reimbursement of medical expenses. *See* 33 U.S.C. §907(d)(3); *M.K. v. California United Terminals*, ___ BRBS ___, BRB No. 03-0392, slip op. at 11 (Feb. 12, 2009).

a lien. The district director should then issue a compensation order that reflects the existence and amount of the lien, the parties' prior agreement as to the amount of compensation for which employer is liable to claimant under the Act, and the manner in which the lien is to be repaid. 20 C.F.R. §702.162(d), (j). Should any party dispute the Plan's right to a lien, the amount of the lien, or the compensation claim, the case should be referred for a hearing to the Office of Administrative Law Judges. 20 C.F.R. §702.162(e), (g), (h).

Id. at 6. Claimant contends that the Board's order remanding the case results in the delay of a full compensation award payable by employer. Specifically, claimant argues that the Board's disposition leaves the case in procedural limbo because the Plan may never file a lien application with the district director. Moreover, claimant asserts that any such application must be denied since the Plan's reimbursement right was released upon the Plan's written acceptance of employer's payment as full and final satisfaction of its right to reimbursement for disability benefits the Plan paid to claimant.

We reject claimant's contention that the Board's decision fails to provide for the entry of an order awarding claimant the full compensation owed him by employer under the Act. Section 702.162(b)(1), 20 C.F.R. §702.162(b)(1), provides that an eligible trust fund should file a lien application with the district director. If neither the compensation claim nor the lien claim is contested, the district director should enter an order awarding benefits and notify the parties "of the amount of the lien and manner in which it is to be paid." 20 C.F.R. §702.162(d). Thus, it is clear that when a lien application has been filed the compensation claim and lien claim are to be resolved at the same time. *M.K. v. California United Terminals*, ___ BRBS ___, BRB No. 03-0392 (Feb. 12, 2009). Moreover, the district director possesses administrative authority necessary to resolve disputes informally. 20 C.F.R. §702.311; *see generally Maine v. Brady-Hamilton Stevedore Co.*, 18 BRBS 129 (1986). This would encompass the authority to set a deadline for a lien application, on the facts of this case. Should the Plan not file a lien application with the district director within a reasonable period of time, the district director is authorized to issue a compensation order awarding benefits pursuant to the agreement between claimant and employer, without any credit to employer for amounts it paid to the Plan. 20 C.F.R. §702.315. If the parties no longer agree on the amount of compensation owed, the case should be referred to an administrative law judge. 20 C.F.R. §702.316.

We also reject claimant's contention that the Plan is no longer entitled to an enforceable lien under Section 17 because it previously signed a release of its lien pursuant to employer's direct payment to the Plan. The Act is clear that the lien must be established under the Act and that the obligation to pay the lien is on claimant. The

manner of the lien payment may be decided by the district director or administrative law judge. 33 U.S.C. §917; 20 C.F.R. §702.162(j).³ In *M.K. v. California United Terminals*, the Board noted that, although an employer has no right to dispute the propriety of any lien asserted by a trust fund, the adjudicator can find that the lien is to be repaid from the disability compensation owed to claimant by employer. *Id.*, slip op. at 14-15 & n. 15, 16. Thus, the Board properly held in its decision in this case that: “[I]n the absence of an enforceable lien awarded pursuant to Section 17, employer’s payment to the Plan is without effect under the Act.” *D.B.*, slip op. at 5; *see* 33 U.S.C. §916.

Therefore, should the Plan file a lien application and establish that it is a qualifying trust fund, the district director “shall” authorize a lien in favor of the Plan pursuant to Section 17. Upon the agreement of claimant, employer, and the Plan, the district director may enter an order establishing the full amount of compensation owed to claimant by employer and the amount of the lien and the manner of its repayment. 20 C.F.R. §702.162(a)-(d). Should the compensation claim and/or lien claim be challenged, the case must be transferred to the Office of Administrative Law judges for an administrative law judge to resolve the disputed issues consistent with the Board’s decisions in this case. 20 C.F.R. §702.162(e). If the Plan does not file an application within a time frame established by the district director, claimant’s compensation claim may be resolved by the issuance of an order under 20 C.F.R. §702.315, based on the parties’ agreement regarding the amount of benefits due.

³ Section 17 states that a lien shall be authorized in favor of a qualified trust fund for benefits paid “which the employee is legally obligated to repay by reason of his entitlement to compensation under this chapter or under a settlement. . . .” Section 702.162(j) of the regulations states that the lien payment may be deducted from future payments but should not “exceed 10 percent of the claimant-employee’s bi-weekly compensation payments.”

Accordingly, claimant's motion for reconsideration is denied. 20 C.F.R. §802.409. The Board's decision is affirmed, and the case is remanded to the district director as stated therein.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge