

ARINE MOODY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING	)	DATE ISSUED:
AND DRY DOCK COMPANY	)	
	)	
Self-Insured	)	
Employer-Petitioner	)	DECISION and ORDER

Appeal of the Decision and Order Granting Benefits To The Claimant of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

Christopher R. Hedrick (Mason & Mason), Newport News, Virginia, for self-insured employer.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order Granting Benefits To The Claimant (98-LHC-0553) of Administrative Law Judge Richard K. Malamphy 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). We must affirm the administrative law judge's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant injured her knees at work on February 11, 1997. Claimant filed a claim for benefits under both the Virginia workers' compensation statute and the Longshore Act. Pursuant to the parties' agreement, the Virginia Workers' Compensation Commission awarded claimant continuing temporary total disability benefits commencing December 17, 1997, "until circumstances require a modification." Emp. Ex. 7. Claimant sought temporary

total disability benefits under the Longshore Act from July 17, 1997 through December 16, 1997.<sup>1</sup>

Employer conceded that claimant is unable to return to her usual work. The administrative law judge found that employer established the availability of suitable alternate employment from July 17, 1997 through November 20, 1997, at which time Dr. Wardell stated that claimant was to remain off work. The administrative law judge further found that claimant's condition did not reach maximum medical improvement until September 16, 1998. Accordingly, he awarded claimant temporary partial disability benefits of \$393.27 per week from July 17, 1997 through November 19, 1997, 33 U.S.C. §908(e), and temporary total disability benefits from November 20, 1997, through December 16, 1997. 33 U.S.C. §908(b). The administrative law judge further ordered that "Payments from December 17, 1997 and continuing shall be in accordance with the state award and the agreement of the parties." Decision and Order at 13. Employer appeals the administrative law judge's order that it pay benefits in accordance with the state award. Claimant has not responded to this appeal.

Employer contends the administrative law judge's order that it pay continuing benefits in accordance with the state award should be struck, as the administrative law judge erred in *sua sponte* raising claimant's entitlement to benefits after December 16, 1997. Employer contends the order is not enforceable under the Longshore Act as it does not specify the compensation due or provide a means of calculating the amount due.

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<sup>1</sup>Employer paid claimant temporary total disability benefits from March 26, 1997 through July 16, 1997, and those benefits were not in dispute.

The administrative law judge's incorporation of the state award into his order is arguably harmless error, as he clearly recognized that claimant's claim under the Longshore Act was for a limited time period. *See* Decision and Order at 2, 10 n.3, 13. Moreover, employer admitted a copy of the state award into evidence, Emp. Ex. 7, and the amount due under that award is clearly stated.<sup>2</sup> *See generally Ledet v. Phillips Petroleum Co.*, 163 F.3d 901, 32 BRBS 212(CRT) (5<sup>th</sup> Cir. 1998); *Bunol v. George Engine Co.*, 996 F.2d 67, 27 BRBS 77(CRT) (5<sup>th</sup> Cir. 1993); *Lazarus v. Chevron USA, Inc.*, 958 F.2d 1297, 25 BRBS 145(CRT) (5<sup>th</sup> Cir. 1992); *Severin v. Exxon Corp.*, 910 F.2d 286, 24 BRBS 21(CRT) (5<sup>th</sup> Cir. 1990). Nonetheless, we vacate that portion of the administrative law judge's decision ordering employer to pay benefits in accordance with the state award.<sup>3</sup> Claimant did not seek benefits under the Longshore Act for any period after December 16, 1997, and the administrative law judge therefore did not make any findings regarding claimant's entitlement to benefits under the Longshore Act after this date. His order that employer continue to pay benefits in accordance with the state award is not enforceable under the Longshore Act, *see* 33 U.S.C. §918(a), as these benefit are not "due" under the Longshore Act. *See* 33 U.S.C. §914. Although the administrative law judge's inclusion of the state award into his order therefore is superfluous, we vacate this portion of his order in order to clarify employer's limited obligation for benefits under the Longshore Act.

Accordingly, that portion of the administrative law judge's decision ordering employer to pay benefits in accordance with the state award is vacated. In all other respects, the administrative law judge's decision is affirmed.

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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<sup>2</sup>The state Workers' Compensation Commission entered the following award: "temporary total compensation based upon an average weekly wage of \$809.91 in the weekly amount of \$496.00 . . . beginning again December 17, 1997, and continuing until circumstances require a modification." Emp. Ex. 7.

<sup>3</sup>We note that employer could have tried to resolve this issue by way of a motion for reconsideration filed with the administrative law judge.

JAMES F. BROWN  
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting  
Administrative Appeals Judge