

U.S. Department of Labor

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



BRB No. 19-0118

ANTOINETTE HORTON)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
FLUOR FEDERAL GLOBAL PROJECTS,)	
INCORPORATED)	DATE ISSUED: 05/08/2019
)	
and)	
)	
INSURANCE COMPANY OF THE STATE)	
OF PENNSYLVANIA)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Order Granting Motion for Remand of Jennifer Gee, Administrative Law Judge, United States Department of Labor.

Howard S. Grossman and Scott L. Thaler (Grossman Attorneys at Law), Boca Raton, Florida, for claimant.

Victor Burnette (The Law Office of Gabriel S. Hendrickson), New Orleans, Louisiana, for employer/carrier.

Before: BOGGS, Chief Administrative Appeals Judge, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Order Granting Motion for Remand (2018-LDA-00761) of Administrative Law Judge Jennifer Gee rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §901 *et seq.*, as

extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (the Act). We will review the administrative law judge's Order for abuse of discretion and compliance with law. *See, e.g., Tahara v. Matson Terminals, Inc.*, 511 F.3d 950, 41 BRBS 53(CRT) (9th Cir. 2007).

Claimant sustained injuries while working for employer on May 4, 2017, at Bagram Air Force Base in Afghanistan. Employer voluntarily began paying claimant temporary total disability benefits at the maximum compensation rate and medical benefits on June 12, 2017.¹ Apparently, prior to any informal conference,² claimant requested transfer of her claim to the Office of Administrative Law Judges (OALJ) for a formal hearing on issues relating to her entitlement to benefits.³ Employer thereafter moved that the administrative law judge remand the claim to the district director because the absence of any disputed issues rendered the claim "not ripe for adjudication."

The administrative law judge issued an Order to Show Cause instructing the parties to state why this case should not be remanded. In response, claimant stated that employer's refusal to stipulate to the entry of a compensation order for an ongoing award of temporary total disability benefits established that the parties were not in agreement on all issues, prompting her request for a formal hearing. Employer responded that there was no dispute because it did not controvert any aspect of claimant's claim. In her Order dated December 4, 2018, the administrative law judge remanded the case to the district director, stating that employer accepted the claim within 30 days after it received notice of claimant's claim and had not controverted any issues.

¹In her reply brief, claimant asserts that employer suspended payments between June 29 and July 25, 2017, but paid benefits for this period after the case was referred to the administrative law judge.

²There is no evidence in the record, nor can it be discerned from the parties' pleadings, that an informal conference has been held in this case. *See infra.*

³According to her June 4, 2018 LS-18 Pre-Hearing Statement, claimant requested a hearing to resolve the following issues:

1. Payment of temporary total disability benefits at the correct AWW (TTD) and/or (TPD) benefits, from May 4, 2017 to MMI (TBD);
2. Payment of permanent partial disability benefits (PPD) and/or permanent total disability benefits (PTD) from MMI to present and ongoing;
3. Compensability and authorization for treatment for claimant's right foot, back and neck injuries;
4. Penalties and Interest;
5. Attorney's Fees and Costs.

On appeal, claimant challenges the administrative law judge's decision to remand the case to the district director. Claimant contends that employer has refused to stipulate to the entry of a compensation order and she properly raised her entitlement to continuing temporary total disability benefits before the administrative law judge. Employer responds, urging affirmance of the Order Granting Motion for Remand. Claimant has filed a reply brief.

The district director's role under the Act is that of a claims administrator who functions to both process claims and facilitate their informal resolution "amicably and promptly." 20 C.F.R. §702.301; *see, e.g., Sans v. Todd Shipyards Corp.*, 19 BRBS 24 (1986); *Maine v. Brady-Hamilton Stevedore Co.*, 18 BRBS 129 (1986); *see also* 20 C.F.R. §§702.301 – 702.321. The district director is not empowered to adjudicate disputed claims, and absent an agreement by the parties and a request for a compensation order under Section 702.315(a), 20 C.F.R. §702.315(a),⁴ the district director is not empowered to issue a compensation order on factual issues. *Roulst v. Marco Constr. Co.*, 15 BRBS 443 (1983); *see generally Healy Tibbitts Builders, Inc. v. Cabral*, 201 F.3d 1090, 33 BRBS 209(CRT) (9th Cir.), *cert. denied*, 531 U.S. 956 (2000). When the parties do not agree on all issues following informal proceedings, any party may request a formal hearing before an administrative law judge. 20 C.F.R. §§702.316, 702.317; *see Ingalls Shipbuilding, Inc. v. Asbestos Health Claimants*, 17 F.3d 130, 28 BRBS 12(CRT) (5th Cir. 1994); *Irby v. Blackwater Security Consulting, LLC*, 41 BRBS 21 (2007); *Hitt v. Newport News Shipbuilding & Dry Dock Co.*, 38 BRBS 47 (2004).

Once the case is before an administrative law judge, Section 19(c) of the Act provides that an administrative law judge "shall" by "order" "make an award" or "reject the claim." 33 U.S.C. §919(c); *see also* 20 C.F.R. §702.348. Pursuant to Section 19(c) and Section 702.348, the Board has held that the administrative law judge's compensation order must include an "order" directing the payment of benefits in compensable cases. *Aitmbarek v. L-3 Communications*, 44 BRBS 115, 120 n.8 (2010); *see also Davis v. Delaware River Stevedores, Inc.*, 39 BRBS 5 (2005); *Hoodye v. Empire/United*

⁴Section 702.315(a) states in relevant part:

Following an informal conference at which agreement is reached on all issues, the district director must (within 10 days after conclusion of the conference), embody the agreement in a memorandum or within 30 days issue a formal compensation order, to be filed and served in accordance with §702.349. If either party requests that a formal compensation order be issued, the district director must, within 30 days of such request, prepare, file, and serve such order in accordance with §702.349.

Stevedores, 23 BRBS 341 (1990). However, an administrative law judge may remand the case to the district director when the employer withdraws its controversion to the claim and the parties are in agreement as to the claim's disposition. 20 C.F.R. §§702.351, 702.315(a); *see Irby*, 41 BRBS at 23.

This case was transferred to the OALJ at claimant's request based on her LS-18 Form identifying issues allegedly in dispute. *See* n.3, *supra*. Employer, in its motion to remand the case to the district director, stated "there are no disputed issues" because it has "accepted this claim in full and [is] paying Claimant the maximum TTD rate[, and n]o requested medical care is controverted." In remanding the case, the administrative law judge found that employer accepted the claim, has not controverted any aspect of claimant's claim, and it appears the claim never should have been transferred to the OALJ.

On appeal, claimant has not identified any error in the administrative law judge's decision to remand the case to the district director. There is no indication in the parties' pleadings to the administrative law judge or Board that any informal proceedings were attempted before the district director. The regulations at 20 C.F.R. §§702.311 through 702.316 contemplate that dispute resolution and issue narrowing proceedings first be brought before the district director. If, following such informal proceedings, the parties disagree as to the resolution of any issues or to the issuance of a compensation order, any party then has the option of requesting the case's referral to the OALJ for adjudicative proceedings.⁵ Claimant also concedes "[t]he Employer/Carrier has provided temporary total disability benefits to the Claimant since her work-related injuries resulted in her disability." Cl. Br. at 4. Because claimant has not shown that employer has refused to stipulate to the issuance of a compensation order by the district director under Section 702.315, we affirm the administrative law judge's decision to remand this case to the district director for further informal proceedings.⁶

⁵In *Ingalls Shipbuilding, Inc. v. Asbestos Health Claimants*, 17 F.3d 130, 28 BRBS 12(CRT) (5th Cir. 1994), the court stated that the district director has a mandatory duty to refer the case to the OALJ upon a party's request after informal proceedings have not resulted in agreement, pursuant to Section 702.316.

⁶The cases cited by claimant in support of her position are distinguishable from this case because they all involve situations where the employers controverted some aspect of the claimants' claims, the cases were transferred to the OALJ, and factual disputes remained while the cases were pending before an administrative law judge. *See, e.g., Irby v. Blackwater Security Consulting, LLC*, 41 BRBS 21, 24 (2007); *Hoodye v. Empire/United Stevedores*, 23 BRBS 341 (1990) (because the issues of nature and extent of the claimant's disability were properly before the administrative law judge, he erred by failing to make a determination regarding claimant's right to an ongoing award); *see also Falcone v. General*

If, on remand, the district director finds that the parties have reached agreement on all issues and seek the issuance of a compensation order, he may issue a formal compensation order expressing the parties' agreement. 20 C.F.R. §702.315(a). If, however, the district director determines there remain unresolved issues between the parties, including a refusal to enter into a stipulated compensation order, he may, upon request by either party, forward the case to the OALJ for a formal hearing, culminating with the administrative law judge's issuance of a compensation order awarding or denying benefits.⁷ 33 U.S.C. §919(c); *see also* 33 U.S.C. §919(e); 20 C.F.R. §702.348; *Irby*, 41 BRBS at 24; *Falcone v. General Dynamics Corp.*, 21 BRBS 145 (1988); *Edwards v. Willamette W. Corp.*, 13 BRBS 800 (1981); 20 C.F.R. §§702.316, 702.317.

Dynamics Corp., 21 BRBS 145 (1988) (where the employer attempted to withdraw its controversion at the hearing, but the parties were not in agreement, the administrative law judge properly retained jurisdiction over the case). Claimant also cites an unpublished Board case, *Baxter v. CSA, Ltd*, BRB No. 18-0200 (Oct. 30, 2018) (unpub.), which has no precedential value. *Lopez v. Southern Stevedores*, 23 BRBS 295 (1990). Nevertheless, there too, the employer controverted aspects of the claimant's claim, thus warranting referral of the case to the OALJ. Because the Board could not ascertain from the administrative law judge's decision or from the record whether a controversy remained after the case was before the administrative law judge, it remanded the case to the administrative law judge for a determination as to the existence of a factual dispute.

⁷Once the case is before the administrative law judge, claimant is entitled to the issuance of a compensation order if she requests one. It will be apparent once the case is in the hands of the district director whether employer, as claimant suggests, refuses to stipulate to her entitlement to benefits. 20 C.F.R. §702.316. If that is indeed the case, then either party may request referral of the case to the administrative law judge for further proceedings. *Id.*

Accordingly, the administrative law judge's Order Granting Motion for Remand is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge