

MICHAEL IVICEVICH)
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 Claimant-Respondent)
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 v.)
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 EAGLE MARINE SERVICES) DATE ISSUED: 11/15/2005
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 Self-Insured)
 Employer-Petitioner) ORDER

Employer appeals the Decision and Order Awarding Benefits and the two Orders on Motion for Reconsideration of Administrative Law Judge Alexander Karst. Claimant has notified the Board that he has filed a motion for modification of the administrative law judge’s decisions, 33 U.S.C. §922, and he seeks to have the case remanded to the administrative law judge.

In its appeal, employer contends that the administrative law judge erred in adjusting claimant’s post-injury wages using an inflation factor calculated with reference to the percentage change in the national average weekly wage. Employer contends that the best evidence of the change in wage rates is the collective bargaining agreement in effect between employer and claimant’s union. Employer avers that the administrative law judge erred in not allowing employer to admit this contract into evidence on reconsideration.

In view of claimant’s filing a motion for modification, we dismiss employer’s appeal without prejudice. 20 C.F.R. §802.301(c). Modification may be granted based on a mistake in fact or a change in the claimant’s physical or economic condition. *Metropolitan Stevedore Co. v. Rambo [Rambo I]*, 515 U.S. 291, 30 BRBS 1(CRT) (1995). In a modification proceeding, the administrative law judge has “broad discretion to correct mistakes of fact, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted.” *O’Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 256 (1971). Generally, Section 22 displaces notions of finality, as the goal of Section 22 is to achieve an accurate result in order to render “justice under the Act.” *Old Ben Coal Co. v. Director, OWCP*, 292 F.3d 533, 36 BRBS 35(CRT) (7th Cir. 2002). Therefore, once the administrative law judge reopens the case to address claimant’s motion for modification, employer may seek to introduce the collective bargaining agreement and to argue that the administrative law

judge's inflation adjustment should be modified. *See Johnston v. Director, OWCP*, 280 F.3d 1272, 36 BRBS 7(CRT) (9th Cir. 2002).

Accordingly, employer's appeal is dismissed without prejudice. Employer may seek to have its appeal reinstated upon a motion filed within 30 days of the filing of the administrative law judge's decision on modification. 20 C.F.R. §802.301(c). In addition, any party adversely affected or aggrieved by the administrative law judge's decision on modification may file an appeal within 30 days of the filing of that decision, in accordance with the provisions of 33 U.S.C. §921 and 20 C.F.R. §§802.201, 802.205, 802.301(c).

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge