BRB No. 93-0713

WOODROW STOCKMAN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
INGALLS SHIPBUILDING, INCORPORATED	)	DATE ISSUED: _____
	)	
Self-Insured	)	
Employer-Respondent	)	
	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Petitioner	)	DECISION and ORDER

Appeal of the Decision and Order of G. Marvin Bober, Administrative Law Judge, United States Department of Labor.

Paul M. Franke, Jr. (Franke, Rainey & Salloum), Gulfport, Mississippi, for self-insured employer.

Mark Reinhalter (J. Davitt McAteer, Acting Solicitor of Labor; Carol DeDeo, Associate Solicitor; Janet R. Dunlop, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director), appeals the Decision and Order (91-LHC-2040) of Administrative Law Judge G. Marvin Bober 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 findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in

accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant sought disability compensation under the Act for an asbestos-related lung condition. In a Decision and Order dated May 12, 1982, the administrative law judge found that although claimant suffered from asbestosis, his asbestosis was not disabling. Accordingly, he denied disability compensation, but he awarded claimant future medical benefits. *Stockman v. Ingalls Shipbuilding, Inc.*, Case No. 81-LHCA-993 (May 12, 1982).

Subsequent thereto, claimant entered into various third-party settlements with eleven asbestos manufacturers.[1] On September 5, 1990, employer filed a Motion to Dismiss claimant's right to any further medical benefits or possible disability compensation pursuant to Section 33(g)(1) of the Act, 33 U.S.C. §933(g)(1). In his decision, the administrative law judge dismissed claimant's "claim," finding that in light of the decision of the Supreme Court in *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 26 BRBS 49 (CRT) (1991), and Fifth Circuit case precedent, the claim was barred pursuant to Section 33(g)(1) based on claimant's failure to obtain employer's prior written approval of the third-party settlements.[2]

The Director appeals the latter decision, contending that the administrative law judge erred in granting employer's motion to dismiss and in terminating claimant's right to further medical benefits under the Act. Citing *Bethlehem Steel Corp. v. Mobley*, 920 F.2d 558, 24 BRBS 49 (CRT) (9th Cir. 1990), the Director specifically avers that because compensation for purposes of Section 33(g)(1) means periodic payments for loss of wage-earning capacity, and not entitlement to medical benefits, claimant's failure to obtain prior written approval of the settlements does not bar his claim. Employer responds, urging affirmance, and contending that in *Cowart*, 505 U.S. at 469, 26 BRBS at 49 (CRT), the United States Supreme Court specifically overruled the rationale applied in *Mobley*.[3]

For the reasons stated in *Harris v. Todd Pacific Shipyards Corp.*, 28 BRBS 254, 264 (1995), *aff'd and modified on recon. en banc.*, 30 BRBS 5 (1996) (Brown and McGranery, JJ., concurring in part and dissenting in part), we hold that the administrative law judge erred in dismissing claimant's

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[1]The aggregate gross amount of the third-party settlements in the eleven cases was approximately $162,000, and the net amount to claimant was approximately $106,000. *See* Affidavit of Danny E. Cupit.

[2]The administrative law judge noted that claimant has not submitted any requests for further benefits under the Act.

[3]Employer also contends that as claimant agreed to the dismissal of this claim and has neither opposed same nor appealed the decision of the administrative law judge, the Director may not even have standing to appeal this issue. The Director has standing to file this appeal before the Board as a party-in-interest. *See Ingalls Shipbuilding Div. v. White*, 681 F.2d 275, 14 BRBS 988 (5th Cir. 1982), *reh'g denied*, 690 F.2d 905 (1982); *Renfroe v. Ingalls Shipbuilding, Inc.*, ___ BRBS ___, BRB Nos. 91-170/A (June 24, 1996) (Decision on Recon.); *Ahl v. Maxon Marine, Inc.*, 29 BRBS 125, 126 (1995); 20 C.F.R. §802.201(a).

claim. As claimant was found to be entitled only to medical benefits in the initial proceeding, and the term "compensation" in Section 33(g)(1) does not include medical benefits, he is not a "person entitled to compensation" under Section 33(g)(1). Thus, his failure to comply with the prior written approval requirement of Section 33(g)(1) cannot bar the claim. *See also Gladney, et al. v. Ingalls Shipbuilding, Inc.*, 30 BRBS 25 (1996) (McGranery, J., concurring); *Parker v. Ingalls Shipbuilding, Inc.*, 28 BRBS 339 (1994) (where claimant settled compensation claim and had not sought medical benefits, employer's motion to dismiss based on Section 33(g) is not ripe for adjudication).

Accordingly, we vacate the administrative law judge's decision. Inasmuch, however, as the record reflects that claimant submitted a letter indicating his willingness to having his claim dismissed, the case is remanded for the administrative law judge to consider whether claimant's entitlement to additional benefits should be terminated on this basis and for further action consistent with law.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge