

CLARENCE HARTLEY, JR.)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
JACKSONVILLE SHIPYARDS,)	DATE ISSUED:_____
INCORPORATED)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order - Denying Modification of John C. Holmes, Administrative Law Judge, United States Department of Labor.

John E. Houser, Thomasville, Georgia, for claimant.

Cindy L. Anderson (Taylor, Day & Rio), Jacksonville, Florida, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denying Modification (86-LHC-1554) of Administrative Law Judge John C. Holmes 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 supported by substantial evidence, are rational, and are in accordance with law. *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant sustained allergic chronic dermatitis during his employment with employer as a shipbreaker. In a Decision and Order dated November 12, 1987, Administrative Law Judge Simpson, relying in part upon the opinion of Dr. Snyder, awarded claimant temporary total disability benefits for the period of March 21, 1984 through September 7, 1984, and permanent partial disability benefits thereafter. Claimant subsequently sought modification of this award pursuant to Section 22 of the Act, 33 U.S.C. §922. After conducting a formal hearing regarding claimant's petition for modification, Administrative Law Judge Holmes found that claimant failed to satisfy his burden of establishing either a mistake in a determination of fact or a change in conditions based on his newly submitted evidence; accordingly, he denied claimant's petition for modification.

On appeal, claimant asserts that the administrative law judge erred in failing to find that his physical condition has substantially worsened and, furthermore, that his condition precludes him from pursuing gainful employment. Claimant additionally avers that the administrative law judge erred in failing to award him interest and penalties.¹ Employer responds, urging affirmance.

Pursuant to Section 22 of the Act, 33 U.S.C. §922, any party-in-interest, at any time within one year of the last payment of compensation or within one year of the rejection of the claim, may request modification based upon a mistake of fact in the initial decision or a change in claimant's condition. *See Dobson v. Todd Pacific Shipyards Corp.*, 21 BRBS 174 (1988). In order to obtain modification for a mistake in fact, the modification must render justice under the Act. *McCord v. Cephas*, 532 F.2d 1377, 3 BRBS 371 (D.C. Cir. 1976). A disability may also be modified under Section 22 where there is a change in either claimant's physical or economic condition. *Metropolitan Stevedore Co. v. Rambo*, 115 S.Ct. 2144, 30 BRBS 1 (CRT) (1995).

We reject claimant's assertion that the administrative law judge misunderstood the scope of his authority when considering claimant's petition for modification. In rendering his decision, the administrative law judge considered all of the evidence submitted since the original award of compensation, compared this new evidence with the previously submitted medical evidence, and concluded that the opinion of Dr. Boyne, claimant's treating physician,² was persuasive since her reports dominate the evidence submitted since the previous decision and are more indicative of claimant's present condition than when Dr. Snyder treated claimant. The administrative law judge thus found that claimant failed to establish a worsening of his physical condition since Dr. Boyne's diagnosis was similar to the prior opinion of Dr. Snyder.³ Moreover, in light of this finding, the administrative law judge reasonably found that claimant's ability to perform the suitable alternate employment identified in the prior proceeding remains unchanged. As the administrative law judge's denial of modification is rational and in accordance with law, it is affirmed. *See generally General Dynamics Corp. v. Director, OWCP*, 673 F.2d 23, 14 BRBS 636 (1st Cir. 1982).

¹Claimant's contention that doubtful questions of fact are to be resolved in his favor lacks merit inasmuch as the United States Supreme Court has held that the "true doubt rule" does not apply to cases under the Longshore Act because it violates Section 7(c) of the Administrative Procedure Act, 5 U.S.C. §556(d), which requires that the party seeking the award bear the burden of persuasion. *Director, OWCP v. Greenwich Collieries*, ___ U.S. ___, 114 S.Ct. 2251, 28 BRBS 43 (CRT) (1994).

²Dr. Boyne apparently took over claimant's treatment from Dr. Snyder, claimant's initial treating physician.

³Dr. Boyne opined that claimant's chronic eczema dermatitis is "fairly limited [or] fairly mild, not particularly severe" and is not disabling, although it does preclude employment in a workplace with chemicals, irritating substances, debris in the air, aerosolized substances, and extremes in temperatures. EX 5 at 15, 17-18, 26-27. Dr. Snyder diagnosed chronic dermatitis that "waxes and wanes according to the weather conditions" and concluded that it is essential that claimant work in an air-conditioned environment. EX 8.

Lastly, claimant contends that the administrative law judge erred in failing to address his request for unpaid interest and penalties. Employer responds, asserting that the parties' stipulation regarding the amounts due to claimant are noted in Judge Holmes' decision. Administrative Law Judge Simpson awarded claimant interest on all accrued and unpaid benefits, but he did not compute the exact figure due. During the formal hearing on modification held on June 23, 1992, the parties agreed to obtain an impartial individual to calculate the accrued interest in this case. *See* 1992 Hearing Transcript at 16-19. Claimant thereafter filed a letter dated August 28, 1992, with the administrative law judge declaring that he is entitled to \$2,381.74 in interest and penalties. After noting that the parties had settled this issue post-hearing, the administrative law judge did not address this issue in his decision. *See* Decision and Order - Denying Modification at 1 n.1. Pursuant to claimant's assertions on appeal, it appears that this issue remains unresolved; we therefore remand this case to the administrative law judge for consideration of claimant's assertions regarding his entitlement to interest and penalties.

Accordingly, the Decision and Order - Denying Modification of the administrative law judge is affirmed. The case is remanded for consideration of the issue of claimant's entitlement to interest and penalties.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge