

MILDRED GARRETT)	
(Widow of EARL GARRETT))	
)	
Claimant)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	DATE ISSUED:
INCORPORATED)	
)	
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 on Remand of G. Marvin Bober, Associate Chief Administrative Law Judge, United States Department of Labor.

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

Before: BROWN, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director), appeals the Decision and Order on Remand (91-LHC-993) of Associate Chief 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).¹ We must affirm the

¹The Director also filed with his Petition for Review a Motion for Summary Reversal of the Administrative Law Judge's Decision and Order on Remand. Given our disposition of this appeal,

findings of fact and conclusions of law of the administrative law judge if they are rational, supported by substantial evidence, and in accordance with law. *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

This case is before the Board for the second time. Claimant's husband (decedent) filed a claim for compensation under the Act. On October 1, 1992, the administrative law judge issued a Decision and Order granting employer's motion to dismiss the claim pursuant to Section 33(g)(1) of the Act, 33 U.S.C. §933(g)(1), in accordance with the decision of the United States Supreme Court in *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 26 BRBS 49 (CRT)(1992). The Certificate of Filing and Service attached to the administrative law judge's Decision and Order indicates that it was filed by the Office of the District Director on October 19, 1992, and that copies of the administrative law judge's Decision and Order were mailed on that date to the parties and their representatives. On October 29, 1992, the Director submitted by mail a Motion for Reconsideration and a Motion to Reopen Record for Admission of Additional Evidence to the administrative law judge. In a Decision and Order on Motion for Reconsideration, the administrative law judge denied the Director's motion as untimely filed based upon his determination that his Decision and Order was "filed" as of the date it was received by the Office of the District Director. Specifically, the administrative law judge determined that inasmuch as his Decision and Order was "dated and served" by the Office of Administrative Law Judges on the Office of the District Director on October 1, 1992, and filed with the district director by no later than October 13, 1992, in order to be timely the Director's motion for reconsideration had to be filed by October 23, 1992. Thus, the administrative law judge found the Director's motion, mailed on October 29, 1992, and received by the Office of Administrative Law Judges on October 30, 1992, to be untimely. *See* Decision and Order on Motion for Reconsideration at 5.

The Director appealed the administrative law judge's Decision and Order on Motion for Reconsideration to the Board. BRB No. 93-1065. In an Order dated April 12, 1993, the Board, after noting that the administrative law judge's initial Decision and Order was filed in the Office of the District Director on October 19, 1992, held that, as a matter of law, the Director's motion for reconsideration, which was postmarked October 29, 1992, was timely filed with the administrative law judge. The Board thus remanded this case to the administrative law judge for consideration of the Director's motion on its merits.

In his Decision and Order on Remand, the administrative law judge declined to address the merits of the Director's motion for reconsideration but, rather, reconsidered his prior determination as to whether that motion was timely filed. The administrative law judge subsequently found that his previous findings were correct and, accordingly, once again concluded that the Director's motion for reconsideration was untimely filed.

On appeal, the Director contends the administrative law judge erred on remand by refusing to consider the merits of the motion for reconsideration in accordance with the Board's remand order. We agree. In agency as well as judicial proceedings, "a lower court is bound to respect the mandate of an appellate tribunal and cannot reconsider questions which the mandate has laid to rest."

the Director's motion is moot.

See Federal Communications Commission v. Pottsville Broadcasting Co., 309 U.S. 134, 140 (1940). Accordingly, in the instant case, the administrative law judge was required to follow the Board's Order that the Director's motion for reconsideration was timely filed, as a matter of law, and that, on remand, the administrative law judge must address the merits of the Director's motion. *See generally Stokes v. George Hyman Const. Co.*, 19 BRBS 110 (1986). We therefore hold that the administrative law judge erred in failing to follow the Board's directive on remand.

Moreover, we note that this precise issue was recently addressed by the Board in *Hamilton v. Ingalls Shipbuilding, Inc.*, 30 BRBS 84 (1996). In *Hamilton*, the Board held that the ten-day period for requesting reconsideration of an administrative law judge's decision commences on the date that the district director certifies is the date on which he filed the administrative law judge's decision. *See* 33 U.S.C. §§919; 921(a); 20 C.F.R. §§702.349, 702.350, 802.206. In the instant case, the district director certified that the administrative law judge's Decision and Order was filed on October 19, 1992. The Director's motion for reconsideration indicates that it was mailed on October 29, 1992. Thus, the Director's motion for reconsideration was timely filed. We therefore reverse the administrative law judge's Decision and Order on Remand, and remand the case for consideration of the merits of the Director's motion for reconsideration.

Accordingly, the Decision and Order on Remand of the administrative law judge is reversed, and the case is remanded to the administrative law judge for consideration of the merits of the Director's motion for reconsideration.

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge