BRB No. 96-0206

JOSEPH TEUTONICO	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
STATEN ISLAND OPERATING COMPANY	)	DATE ISSUED:
	)	
and	)	
	)	
CIGNA INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Final Order Denying Petition for Modification of Charles P. Rippey, Jr., Administrative Law Judge, United States Department of Labor.

Philip J. Rooney (Israel, Adler, Ronca & Gucciardo), New York, New York, for claimant.

Keith L. Flicker (Flicker, Garelick & Associates), New York, New York, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Final Order Denying Petition for Modification (87-LHC-0637) of Administrative Law Judge Charles P. Rippey, Jr., 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).

On April 25, 1986, claimant sustained injuries to his hip, head, arms, and shins, resulting in a cervical strain, back pain, and multiple abrasions, when his checker booth was crushed by a forty foot container which fell from a crane. Employer voluntarily paid claimant temporary total disability compensation from April 26 until May 27, 1986. 33 U.S.C. §908(b). At the time of his 1988 hearing before Administrative Law Judge Joel R. Williams, claimant sought permanent total

disability compensation, asserting he was unable to work due to pain in his back. Claimant subsequently returned to work and is seeking temporary total disability compensation for the period from May 27, 1986, until his return to work in February 1991.

In his Decision and Order Denying Benefits issued November 16, 1989, Judge Williams weighed the medical evidence of record and, relying upon those physicians finding no continuing disability based on their superior credentials and the lack of abnormal or objective test results supporting claimant's contentions of a continuing disability, concluded that claimant suffered no continuing disability which prevented his return to his usual job. Claimant's motion for reconsideration was denied by Judge Williams on January 23, 1990. Claimant appealed Judge Williams' decision to the Board. In its subsequent decision, the Board affirmed Judge Williams' denial of compensation. *Teutonico v. Staten Island Operating Co.*, BRB No. 90-0772 (March 25, 1992)(unpublished).

On February 9, 1993, claimant filed a motion for modification pursuant to Section 22 of the Act, 33 U.S.C. §922, contending that new evidence established that there had been a mistake in fact as to his underlying condition. In addressing claimant's motion, Administrative Law Judge Rippey (hereafter, administrative law judge) summarily found that claimant's new evidence did not alter the conclusions previously reached by Judge Williams; accordingly, claimant's request for additional benefits was denied.

On appeal, claimant contends that the administrative law judge's decision is unreviewable. Alternatively, claimant argues that the administrative law judge misinterpreted the evidence in reaching his conclusions. 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 only upon a mistake of fact in the initial decision or a change in claimant's condition.[1] *See Metropolitan Stevedore Co. Co. v. Rambo*, 115 S.Ct. 2144, 30 BRBS 30 (CRT)(1995); *Dobson v. Todd Pacific Shipyards Corp.*, 21 BRBS 174 (1988). To reopen the record under Section 22, the moving party must allege a mistake of fact or change of condition, and assert

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[1]Section 22, 33 U.S.C. §922 (1988), states, in pertinent part:

> Upon his own initiative, or upon the application of any party in interest..., on the ground of a change in conditions or because of a mistake in a determination of fact by the deputy commissioner, the deputy commissioner may, at any time prior to one year after the day of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one year after the rejection of a claim, review a compensation case...in accordance with the procedure prescribed in respect of claims in section 919 of this title, and in accordance with such section issue a new compensation order which may terminate, continue, reinstate, increase or decrease such compensation, or award compensation.

that evidence to be produced or of record would bring the case within the scope of Section 22. *Moore v. Washington Metropolitan Area Transit Authority*, 23 BRBS 49 (1989). 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).

In the instant case, the administrative law judge summarily concluded that the evidence of record failed to establish that a mistake in fact had occurred and, thus, that claimant was not entitled to modification under Section 22. We agree with claimant that the administrative law judge's decision cannot be affirmed since it fails to satisfy the requirements of the Administrative Procedure Act (APA), 5 U.S.C. §554, and is thus unreviewable. Hearings of claims arising under the Act are subject to the APA, *see* 33 U.S.C. §919(d), which requires that every adjudicatory decision be accompanied by a statement of

> findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record.

5 U.S.C. §557(c)(3)(A). An administrative law judge thus must adequately detail the rationale behind his decision and specify the evidence upon which he relied. *See Ballesteros v. Willamette W. Corp.*, 20 BRBS 184 (1988); *see also Frazier v. Nashville Bridge Co.*, 13 BRBS 436 (1981). Failure to do so will violate the APA's requirement for a reasoned analysis. *Ballesteros*, 20 BRBS at 187; *see Williams v. Newport News Shipbuilding and Dry Dock Co.*, 17 BRBS 61 (1985).

In his decision, the administrative law judge summarily stated that a reexamination of the evidence presented at the initial hearing did not reveal any mistake of fact. The administrative law judge's failure in the instant case to adequately detail the rationale behind his decision and specify the evidence upon which he relied in finding that claimant was not entitled to modification under Section 22 makes it impossible for the Board to apply its standard of review. *See Ballesteros*, 20 BRBS at 187. Moreover, the administrative law judge's discussion of the case on modification appears to focus on the issue of causation; however, Judge Williams accepted the parties' stipulation that claimant's back impairment arose out of his employment, and he defined the issue as whether claimant was able to return to his usual employment. In finding claimant was able to return to work, the administrative law judge found the medical evidence of record did not contain objective findings of disability and thus credited opinions that claimant could return to work. On modification, claimant sought to establish that a mistake of fact had been made in the determination that he suffered no continuing disability after May 27, 1986, submitting MRI results and medical evidence post-dating the previous decisions in this case, which claimant asserts show a disk herniation. Claimant thus argues that he now has objective proof of disability, and the administrative law judge has not adequately addressed this assertion. In fact, it appears that the administrative law judge did not complete his discussion of the case, as the discussion on page 2 ends in an incomplete sentence.

Accordingly, we vacate the administrative law judge's finding that claimant is not entitled to modification under Section 22 and we remand the case for the administrative law judge to consider

and discuss all of the evidence relevant to the issue of whether claimant suffered a continuing disability subsequent to May 27, 1986, to make appropriate findings based on the relevant law and evidence, and to give a written explanation of the reasons and basis for the determination.

Accordingly, the administrative law judge's Final Order Denying Petition for Modification is vacated and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge