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| IRIS LEON |) | |
| |) | |
| Claimant-Petitioner |) | |
| |) | |
| v. |) | |
| |) | |
| DEPARTMENT OF THE ARMY |) | |
| |) | DATE ISSUED: _____ |
| and |) | |
| |) | |
| ALEXIS, INCORPORATED |) | |
| |) | |
| Employer/Carrier- |) | |
| Respondents |) | DECISION and ORDER |

Appeal of the Decision and Order - Awarding Benefits of Joel F. Gardiner, Administrative Law Judge, United States Department of Labor.

Gregory V. Roach (Ward, Walsh & Roach, P.C.), Fitchburg, Massachusetts, for claimant.

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

PER CURIAM:

Claimant appeals the Decision and Order - Awarding Benefits (94-LHC-2830) of Administrative Law Judge Joel F. Gardiner 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.*, as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *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. 33 U.S.C. §921(b)(3); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant was injured on November 2, 1992, during the course of her employment as a maid at a guest house in Fort Devens, Massachusetts. She was physically attacked, and her shoulders, waist and back were hurt in the struggle with the assailant. Employer voluntarily paid temporary total disability benefits to claimant from November 3, 1992, through October 7, 1993. Claimant filed a claim for additional temporary total and continuing temporary partial disability benefits.

The administrative law judge concluded claimant is entitled to temporary total disability benefits through September 13, 1994, and temporary partial disability benefits from September 14, 1994, and continuing. Decision and Order at 12-13, 15. Because claimant was occasionally

employed during her period of temporary total disability, the administrative law judge awarded employer a credit for periods when wages were paid. *Id.* at 13-15. Specifically, he stated:

Finally, with respect to periods of time that the Claimant is alleged to work between the date of her injury and September 1994, I find that the amounts reported on the LS-200 forms should be deducted from any disability payments. Claimant was either uncertain or agreed that she worked on the dates indicated on the forms or that the person making out the forms may have made an error. In these circumstances, with no other evidence as to whether the Claimant did or did not work on the dates indicated, I find the forms themselves to be the best evidence.

Decision and Order at 13-14. Claimant challenges this finding and appeals to the Board for relief. Employer has not responded.

Claimant contends the administrative law judge erred in relying on the LS-200 (Report of Earnings) forms because they were not the only or the best evidence of record regarding her post-injury earnings. Claimant argues that her actual payroll records, which were admitted and accepted as an exhibit, are the best evidence of the wages she earned during her period of temporary total disability. Because the administrative law judge did not discuss claimant's actual payroll records and instead relied solely on the LS-200 forms,¹ we vacate his calculation of employer's credit for wages received during claimant's period of temporary total disability, and we remand the case for him to consider this issue in light of all the evidence of record, specifically the actual payroll records.² *See generally Olsen v. Triple A Machine Shops, Inc.*, 25 BRBS 40 (1991), *aff'd mem. sub nom. Olsen v. Director, OWCP*, Nos. 91-70642, 92-70444 (9th Cir. June 15, 1993); 20 C.F.R. §§702.338, 702.339.

¹The administrative law judge stated that claimant's testimony regarding the LS-200 forms is ambiguous. He alternatively states that she agreed with the information on the forms, was uncertain about it, or spotted errors on the form. Decision and Order at 13-14.

²We note that the record is missing in this case. The Board's repeated attempts to retrieve from the district director were unproductive; the district director's office sent only the administrative law judge's Decision and Order. Therefore, on remand the administrative law judge may find it necessary to have the relevant evidence resubmitted to him.

Accordingly, that portion of the administrative law judge's Decision and Order pertaining to the calculation of employer's credit for wages received during claimant's period of temporary total disability is vacated, and the case is remanded for further consideration consistent with this opinion. In all other respects, the Decision and Order is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge