PART V

BENEFITS REVIEW BOARD POLICIES AND PROCEDURES

A. SCOPE OF REVIEW

8. LAW OF THE CASE

The rule of law of the case is a discretionary rule of practice, based on the policy that once an issue is litigated and decided, the matter should not be re-litigated. *See* ***United States v. U.S. Smelting Refining & Mining Co.***, 339 U.S. 186 (1950), *reh'g denied*, 339 U.S. 972 (1950). In the absence of statute, the phrase "law of the case," as applied to the effect of previous orders on the later action of the court rendering them in the same case, merely expresses the practice of courts generally to refuse to reopen what has already been decided. ***Meissinger v. Anderson***, 225 U.S. 436 (1912).

CASE LISTINGS

[under "law of the case" it is proper for court to depart from prior holding if convinced it is clearly erroneous and would work manifest injustice] ***Cale v. Johnson***, 861 F.2d 943, 947 (6th Cir. 1988); *citing* ***Arizona v. California***, 460 U.S. 605 (1983).

[when party appeals decision issued pursuant to Board remand, Board applies "law of the case" to issues decided by Board in prior decisions in same case] ***Dean v. Marine Terminals Corp.***, 15 BRBS 394 (1983); ***Whitlock v. Lockheed Shipbuilding and Construction Co.***, 15 BRBS 332 (1983); *see also* ***Stark v. Bethlehem Steel Corp.***, 15 BRBS 288 (1983).

[Board rejected Director argument to reconsider prior holding under subsection (a)(2) from initial case as Director raised same arguments previously addressed by Board, now constituting "law of the case"] ***Bridges v. Director, OWCP***, 6 BLR 1-988 (1984).

DIGESTS

A well established exception to the "law of the case" doctrine allows reexamination when controlling authority has made a contrary decision of law applicable to a previously litigated issue. ***Richardson v. United States***, 841 F.2d 993 (9th Cir. 1988).

The majority of the panel in ***Williams*** notes that it will adhere to the initial decision, ***Williams v. Healy-Ball-Greenfield***, 15 BRBS 489 (1983), because there was no change in the underlying fact situation, no intervening controlling authority demonstrating that initial decision was erroneous, and the Board's initial decision was neither clearly erroneous nor a manifest injustice. This holding of the majority responded to the dissent's contention that the law of the case doctrine is not a rule of law but only a discretionary rule used to promote finality in the judicial process, and that the 1983 holding in ***Williams*** should thus be reversed because the evidence, according to the dissent, does not support the Board's holding therein that the injuries arose out of employment. ***Williams v. Healy-Ball-Greenfield***, 22 BRBS 234 (1989)(Brown, J., dissenting).

The Board held that inasmuch as it had previously affirmed the administrative law judge's finding that employer failed to establish rebuttal pursuant to 20 C.F.R. §727.203(b), and because no exception to the law of the case doctrine had been demonstrated, the law of the case doctrine was controlling on this issue and rebuttal pursuant to Section 727.203(b) was precluded. ***Brinkley v. Peabody Coal Co.***, 14 BLR 1-147 (1990); *see* ***Williams v. Healy-Ball-Greenfield***, 22 BRBS 234, 237 (1989)(Brown, J., dissenting).

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