

RALPH LINTON)
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 Claimant-Petitioner)
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 v.)
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 METRO MACHINE CORPORATION) DATE ISSUED: Aug 25, 2004
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 and)
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 SIGNAL ADMINISTRATION)
)
 Employer/Carrier-)
 Respondents) DECISION and ORDER

Appeal of Decision and Order of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

John H. Klein (Montagna Breit Klein Camden, L.L.P.), Norfolk, Virginia, for claimant.

F. Nash Bilisoly and Lisa L. Thatch (Vandeventer Black LLP), Norfolk, Virginia, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (2002-LHC-1902) of Administrative Law Judge Richard K. Malamphy 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. 33 U.S.C. §921(b)(3); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant was working as a maintenance mechanic when he suffered an injury to his back on August 30, 1997. Claimant sought medical treatment, and the parties

stipulated that claimant filed a timely claim for compensation on October 13, 1997. CX 1. Employer voluntarily paid temporary total disability benefits from the date of injury through January 8, 1998. Claimant attempted to perform light-duty work at employer's facility from January 9, 1998, until January 21, 1998, when he retired on the advice of his physician. Subsequently, claimant sought benefits under the Act for permanent total disability; specifically, claimant filed another claim on November 12, 2001. CX 1.

In his decision, the administrative law judge found that employer ceased voluntary payments in January 1998, and that although claimant contacted the district director in late January and March of 1998 concerning his entitlement to total disability benefits, he did not comply with the recommendation to file a claim for compensation until 2001. Thus, the administrative law judge found that as claimant did not pursue his initial claim or file a timely request for modification, the subsequent claim filed in 2001 is not timely.

On appeal, claimant contends that as he filed a timely claim for benefits under the Act on October 13, 1997, which was never adjudicated, it was still open when he pursued total disability benefits in 2001. Thus, claimant contends the administrative law judge erred in finding his claim time-barred. Employer responds, urging affirmance of the administrative law judge's decision.

Claimant contends that as a timely claim for compensation was filed in 1997 and as there was neither a settlement nor a withdrawal of this claim, the claim was still open for resolution when claimant pursued it in 2001. We agree, and hold that the administrative law judge erred in denying claimant's claim on timeliness grounds. In *Intercounty Constr. Corp. v. Walter*, 422 U.S. 1, 2 BRBS 3 (1975), the Supreme Court addressed whether Section 22 of the Act, 33 U.S.C. §922, barred consideration of a claim which had been timely filed, but which had not been the subject of a formal compensation order within one year after the cessation of voluntary payments. The claimant in *Walter* timely filed a claim for benefits in 1960 and employer instituted voluntary payments while contesting the claim for total disability. A claims examiner adjourned a hearing on the claim in 1966 without resolution. Thereafter, employer stopped its payments to claimant upon reaching the statutory maximum amount of benefits for conditions other than permanent total disability or death. In 1970, two years after receiving the last voluntary payment, claimant requested a hearing on his previously filed claim. The Supreme Court held that the one-year limitations period contained in Section 22 applies only where a compensation order has been issued. *Walter*, 422 U.S. at 11-12, 2 BRBS at 9. Thus, as no compensation order had been entered in *Walter*, claimant's request for a hearing on his claim was not barred by the one-year limit in Section 22. *Id.*; see also *Norton v. National Steel & Shipbuilding Co.*, 25 BRBS 79 (1991), *aff'g on recon. en banc*, 27 BRBS 33 (1993)(Brown, J., dissenting)(Board held that as there was no valid settlement, no valid withdrawal and no order entered, the claim was still open for adjudication by the administrative law judge); *Hargrove v. Strachan*

Shipping Co., 32 BRBS 11, *aff'd on recon.*, 32 BRBS 224 (1998)(Board held that a claim that was timely filed and never adjudicated could be considered by the administrative law judge even over twenty years after the original claim was filed).

In the present case, employer does not dispute that claimant filed a timely claim for benefits in October 1997, well within the time limits established under Section 13 of the Act, 33 U.S.C. §913(a). Rather, employer contends that this filing is insufficient to establish that a claim for permanent total disability was timely filed as the form filed at that time stated that the extent of disability was unknown. *See* CX 1. However, a claim must reveal only an intent to seek compensation, *see Avondale Industries, Inc. v. Alario*, 355 F.3d 848, 37 BRBS 116(CRT) (5th Cir. 2004), and does not need to refer to a precise category of disability; a claimant can liberally modify the dates or categories of disability for which he seeks benefits. *See Pool Co. v. Cooper*, 274 F.3d 173, 35 BRBS 109(CRT) (5th Cir. 2001); *Jones v. Newport News Shipbuilding & Dry Dock Co.*, 36 BRBS 105 (2002); *see also Alexander v. Avondale Industries, Inc.*, 36 BRBS 142 (2002). Moreover, contrary to employer's contention, claimant did not bear a renewed burden of filing a claim within one year of employer's last voluntarily payment in view of his previously filed claim. *Walter*, 422 U.S. 1, 2 BRBS 3. Therefore, as claimant was injured on August 30, 1997, and filed a timely claim on October 13, 1997, which remained open and was pending at the time he requested total disability benefits on November 12, 2001, we reverse the administrative law judge's finding that claimant's claim is time-barred.¹ *See Seguro v. Universal Maritime Service Corp.*, 36 BRBS 28 (2002); *Hargrove*, 32 BRBS 11; *Lewis v. Norfolk Shipbuilding & Dry Dock Co.*, 20 BRBS 126 (1987). Consequently, we remand the case to the administrative law judge for consideration of the case on the merits.

¹ In addition, we agree with claimant that the administrative law judge erred in applying the holding in *I.T.O. Corp. of Virginia v. Pettus*, 73 F.3d 523, 30 BRBS 6(CRT) (4th Cir. 1996), *cert. denied*, 519 U.S. 807 (1996), to the facts in this case. The court in *Pettus* addressed the prerequisites for the initiation of modification under Section 22. Section 22 provides the only means for changing otherwise *final* compensation orders. 33 U.S.C. §922. However, in the instant case, the absence of any compensation order precludes the application of Section 22. *See Walter*, 422 U.S. at 11-12, 2 BRBS at 9; *see also Seguro v. Universal Maritime Service Corp.*, 36 BRBS 28, 31 (2002).

Accordingly, the administrative law judge's Decision and Order denying benefits is reversed, and the case is remanded for further consideration consistent with this decision.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge