

RONALD L. JACOBSON)
(Deceased))

Claimant-Petitioner)

v.)

MARINE TERMINALS)
CORPORATION)

DATE ISSUED: July 28, 2004

and)

MAJESTIC INSURANCE COMPANY)

Employer/Carrier-)
Respondents)

and)

STEVEDORING SERVICES)
OF AMERICA)

and)

HOMEPORT INSURANCE)
COMPANY)

Employer/Carrier-)
Respondents)

and)

COLUMBIA GRAIN,)
INCORPORATED)

and)	
)	
LIBERTY NORTHWEST)	
INSURANCE COMPANY)	
)	
Employer/Carrier-)	
Respondents)	
)	
and)	
)	
JONES STEVEDORING COMPANY)	
)	
Self-Insured)	
Employer-Respondent)	
)	
and)	
)	
ILWU/PMA WELFARE FUND)	
)	
Intervenor)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT)	
OF LABOR)	
)	
Party-in-Interest)	ORDER

Claimant has filed a Motion to Remand in the captioned case. To recapitulate, in its December 2003 Decision and Order in this case, the Board affirmed the administrative law judge's finding that Marine Terminals Corporation is the responsible employer and the continuing award of temporary total disability benefits, 33 U.S.C. §908(b). The Board affirmed the administrative law judge's finding that Marine Terminals must provide for claimant a multi-disciplinary inpatient evaluation and pain management program, pursuant to Section 7 of the Act, 33 U.S.C. §907. The Board reversed the administrative law judge's finding that Marine Terminals is entitled to a credit for the amount of a Section 8(i) settlement claimant entered into with Hall-Buck Marine for an unrelated injury and for wages Marine Terminals paid claimant post-injury. *Jacobson v.*

Marine Terminals Corp., BRB Nos. 03-0255/A/B (Dec. 16, 2003).¹ Marine Terminals appealed the Board's decision to the United States Court of Appeals for the Ninth Circuit.

Meanwhile, claimant's counsel filed a petition for an attorney's fee for work performed before the administrative law judge. In an Order Deferring Setting of Attorney's Fees, the administrative law judge stated that although he has the authority to issue an attorney's fee award while an appeal is pending, he would not do so in this case. The administrative law judge stated that the interest of judicial economy warranted deferment of a fee award until all appeals are exhausted. Claimant filed a timely appeal of the administrative law judge's Order. BRB No. 04-0560.

On June 14, 2004, the Ninth Circuit granted Marine Terminals' motion for voluntary dismissal of its appeal. *Marine Terminals Corp. v. Director, OWCP*, No. 04-070670 (9th Cir. June 14, 2004); Fed. R. App. P. 42(b). Claimant now seeks to have the Board dismiss his appeal and remand the case to the administrative law judge for consideration of his entitlement to an attorney's fee.

We grant claimant's motion. As all appeals have been exhausted, the administrative law judge's rationale for deferring action on the fee petition no longer applies. The administrative law judge may now rule on counsel's fee petition in light of the statutory and regulatory criteria and any objections filed. 33 U.S.C. §928; 20 C.F.R. §702.132. Accordingly, claimant's appeal is dismissed, and the case is remanded to the administrative law judge for consideration of claimant's entitlement to an attorney's fee.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

¹ The Board noted that the issue of who is liable to reimburse the intervenor ILWU/PMA Welfare Fund and the amount to which the Welfare Fund is entitled was pending before the district director.