BRB No. 11-0616

CRAIG CROWLEY Claimant-Respondent v. SERVICE EMPLOYEES INTERNATIONAL, INCORPORATED and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 09/13/2012 ORDER on MOTION for RECONSIDERATION

Claimant has filed a timely motion for reconsideration of the Board's Decision and Order in the captioned case, *Crowley v. Service Employees Int'l, Inc.*, BRB No. 11-0616 (May 24, 2012) (unpub.). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. The Director, Office of Workers' Compensation Programs (the Director), responds in agreement with claimant's motion. Employer responds, opposing claimant's motion. We grant claimant's motion for reconsideration for the reasons set forth below.

Claimant contends that, by virtue of his complaint to the district director's office that employer erroneously suspended benefits in December 2007, he thereby implicitly raised the issue of his entitlement to a Section 14(f) assessment, 33 U.S.C. §914(f). The Director agrees, stating that claimant alleged, while the case was before the district director, the facts necessary to make out a case for employer's default in the payment of benefits, and thus, for an assessment of additional compensation under Section 14(f). The Director adds that while the district director could have issued a default order upon

claimant's filing, he had the authority to refer the matter to the Office of Administrative Law Judges as a factual dispute arose over whether the administrative law judge's initial decision had awarded compensation for a closed or ongoing period of temporary total disability benefits, i.e., was employer even liable for benefits for the period in question. Claimant and the Director thus aver that, contrary to the Board's decision, *Crowley*, slip op. at 7, the administrative law judge did not sua sponte raise the issue of a Section 14(f) assessment. Upon reconsideration, we agree that the record demonstrates that this issue was properly raised by claimant and addressed by the administrative law judge.

In January 2008, claimant raised with the district director an alleged underpayment of benefits after the administrative law judge's first decision issued. *See Lawson v. Atlantic & Gulf Stevedores*, 9 BRBS 855 (1979). Employer had stopped paying claimant benefits after December 2007. In this regard, a dispute arose as to whether the administrative law judge's July 26, 2007 decision ordered the payment of benefits on an ongoing basis or only for a fixed period of time, i.e., from April 26, 2006 through January 3, 2007. In a February 29, 2008 letter from the district director to employer's attorney, the district director concluded that since there was "no basis for terminating either compensation or medical care in this case without modification" of the administrative law judge's initial decision, employer should "authorize ongoing medical care and continued compensation." CXs 2, 3. Employer, however, disputed the district director's recommendation and refused the request to reinstate benefits. *See, e.g.*, Employer's Form LS-18 dated December 5, 2008. The district director thereafter referred the case to the Office of Administrative Law Judges for an expedited hearing.

Claimant's actions, in raising employer's alleged underpayment of benefits with the district director and in seeking reinstatement of compensation pursuant to the administrative law judge's July 26, 2007 decision, are sufficient to establish that he made his claim for a Section 14(f) assessment to the district director in the first instance. *M.R [Rusich] v. Electric Boat Corp.*, 43 BRBS 35, 39 (2009); *Shoemaker v. Schiavone & Sons, Inc.*, 11 BRBS 33 (1979); *see also* 33 U.S.C. §918(a); 20 C.F.R. §702.372; *Richardson v. General Dynamics Corp.*, 19 BRBS 48, 50 n. 1 (1986). That the district director did not address the issue is of no consequence as he properly referred the case to the administrative law judge. Where a question arises as to the interpretation of findings made in a final compensation order, the case must go to an administrative law judge for findings of fact before a district director can determine if the employer is in default under Section 18(a). *See Stetzer v. Logistec of Connecticut, Inc.*, 547 F.3d 459, 42 BRBS 55(CRT) (2d Cir. 2008); *Brown v. Avondale Industries, Inc.*, 46 BRBS 1 (2012); *see also Bray v. Director, OWCP*, 664 F.2d 1045, 14 BRBS 341 (5th Cir. 1981); *Kelley v. Bureau of National Affairs*, 20 BRBS 169 (1988). In this case, based on the parties' continued dispute over what the administrative law judge's initial decision ordered, the district director properly referred the matter to the administrative law judge for clarification. 20

C.F.R. §§702.372(a), 702.316; *see Stetzer*, 547 F.3d 459, 42 BRBS 55(CRT); *Brown*, 46 BRBS 1.

In addition, the pre-hearing documents and claimant's post-hearing brief reveal that claimant raised his entitlement to "penalties" before the administrative law judge. *See* Claimant's Form LS-18 dated November 28, 2008; Claimant's Amended Form LS-18 dated June 5, 2009; Claimant's Post-Hearing Brief dated August 29, 2009, at 3. The administrative law judge, in her decision dated June 9, 2011, rejected employer's contention that her prior decision awarded claimant compensation only for a closed period of temporary total disability from April 26, 2006 through January 3, 2007. She thus found employer liable for a Section 14(f) assessment on past-due compensation payable from the date employer erroneously terminated claimant's compensation, i.e., December 6, 2007.

As the issue of claimant's entitlement to a Section 14(f) assessment was properly raised, we vacate the Board's decision with regard to Section 14(f). Based on the facts of this case, the administrative law judge had the authority to award a Section 14(f) assessment. Moreover, as employer did not otherwise contend that the Section 14(f) assessment was improper, we affirm the administrative law judge's imposition of a Section 14(f) assessment. 33 U.S.C. §914(f); *see Honaker v. Mar Com Inc.*, 44 BRBS 5 (2010); *Richardson*, 19 BRBS 48.

Accordingly, claimant's motion for reconsideration is granted.[1] The Board's decision is vacated in part as stated herein. The administrative law judge's imposition of a Section 14(f) assessment is affirmed. 20 C.F.R. §§801.301(c), 802.409.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

[1]Claimant's request for reconsideration en banc, therefore, is moot. 20 C.F.R. §801.301(c).