



**RECENT SIGNIFICANT DECISIONS -- MONTHLY DIGEST # 297
May 2019**

Stephen R. Henley
Chief Judge

Paul R. Almanza
Associate Chief Judge for Longshore

William S. Colwell
Associate Chief Judge for Black Lung

Yelena Zaslavskaya
Senior Counsel for Longshore

Alexander Smith
Senior Counsel for Black Lung

**I. Longshore and Harbor Workers' Compensation Act
and Related Acts**

A. U.S. Circuit Courts of Appeals¹

No published decisions to report.

B. Benefits Review Board

***Teer v. Huntington Ingalls Inc.*, __ BRBS __ (2019).**

Agreeing with the OWCP Director, the Board held that the district director has the sole authority to determine the extent of home modifications necessary for claimant's work-related injury. It further held that there is no statutory basis for the ALJ's award of credit to employer for modifications to claimant's former residence.

Claimant sustained ankle injuries while working for employer, ultimately resulting in bilateral below-the-knee amputations. Claimant was living with his parents in their home (the "Teer residence"), and, in 2004, employer agreed to reimburse claimant's parents \$35,743 for modifications to the Teer residence. Claimant married in 2007 and continued to live in the Teer residence with his wife. In 2010, claimant and his wife moved out at his mother's request after she remarried. Claimant's wife eventually purchased a new home, and claimant requested that employer provide modifications to his wife's home in October 2014, which employer denied.

¹ Citations are generally omitted with the exception of particularly noteworthy or recent decisions. Short form case citations (*id.* at __) pertain to the cases being summarized and, where citation to a reporter is unavailable, refer to the Westlaw identifier (*id.* at *__).

The ALJ rejected employer's contentions that claimant forfeited entitlement to further home modifications pursuant to Section 7(d), by failing to seek employer's authorization to move to a new home, and that modifying a second home was not reasonable and necessary for claimant's work injuries. The ALJ found, however, that claimant chose to abandon the value of the employer-paid modifications to the Teer residence, and he held employer liable for modifications to the new home, less a credit of \$35,743. With respect to the extent of the necessary modifications, the ALJ addressed in depth the home modification plans submitted by each party and gave "more weight" to employer's proposed modifications. However, he declined to order specific modifications because such determinations are within the discretionary authority of the district director. Claimant appealed.

The Board stated that for a medical expense to be assessed against the employer, it must be reasonable and necessary for treatment of the work injury. Reasonable and necessary medical expenses may include house modifications. The Board concluded:

We agree with claimant and the Director that no statutory basis exists for the credit awarded in this case. The Act's specific credit provisions are not applicable to medical expenses. Moreover, there is no basis to find any "extra-statutory" credit applicable here, as such "credit doctrines" have been strictly limited.

The [ALJ] found no evidence that claimant moved in order to impose on employer liability for additional expenses or based on a "personal preference" to live elsewhere. Rather, after employer modified the Teer residence, he found "circumstances arose that made it no longer reasonable for [claimant] to continue living in that house" and these circumstances "were also largely beyond [claimant's] control." We decline to extend the credit doctrine under these circumstances and hold it is reasonable and consistent with law for employer to pay the cost of renovating claimant's current residence for wheelchair accessibility. Accordingly, we reverse the [ALJ's] award to employer of a \$35,743 credit for the amount expended to renovate the Teer residence.

Slip op. at 4-5 (footnotes and citations omitted).

The Board further held that the ALJ's addressing the merits of the parties' home modification plans is without effect, as the district director has the sole authority to determine the extent of the necessary modifications. Section 7(b) of the Act states in pertinent part:

The Secretary shall actively supervise the medical care rendered to injured employees, . . . , shall have authority to determine the necessity, character, and sufficiency of any medical aid furnished or to be furnished

33 U.S.C. § 907(b). Section 702.407 of the regulations provides:

The Director, OWCP, through the district directors and their designees, shall actively supervise the medical care of an injured employee covered by the Act. Such supervision shall include:

(b) The determination of the necessity, character and sufficiency of any medical care furnished or to be furnished the employee, including whether the charges made by any medical care provider exceed those permitted under the Act.

20 C.F.R. § 702.407(b). Thus, "issues regarding the character and sufficiency of necessary home modifications are within the purview of the district director. Moreover, the district director is not bound by the [ALJ's] musings on this issue." Slip op. at 7 (footnote and citations omitted). The Board noted that

An [ALJ] has the authority to decide disputed factual issues that arise in a claim for medical benefits, such as the necessity of care for the work injury. These issues are characterized by the need for fact-finding and the weighing of evidence. In contrast, medical issues involving the exercise of discretion are within the purview of the district director. In this case, the necessity of home modifications has been established. Thus, the district director, in the exercise of sound discretion, is charged with selecting the modifications. His decision is appealable directly to the Board.

Slip op. at 7 n.8. Accordingly, the Board affirmed the ALJ's remanding of the case to the district director to determine the extent of home modifications.

[Section 7 – MEDICAL BENEFITS; Authority of the Administrative Law Judge in General]

II. Black Lung Benefits Act

No decisions to report.