

BRB No. 91-1385

RAYMOND SANTOS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DILLINGHAM SHIPYARD,	)	DATE ISSUED:
INCORPORATED	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Summary Decision and Order Dismissing Case and Order Denying Motion to Reconsider of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Jeffrey M. Taylor, Honolulu, Hawaii, for claimant.

Scott G. Leong (Goodsill, Anderson, Quinn & Stifel), Honolulu, Hawaii, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Summary Decision and Order Dismissing Case and Order Denying Motion to Reconsider (89-LHC-3805) of Administrative Law Judge Jeffrey Tureck 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 findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant, on March 12, 1964, sustained a work-related injury to his lower back while in the course of his employment with employer. Thereafter, employer voluntarily paid temporary total disability compensation, as well as medical benefits, to claimant. 33 U.S.C. §§908(b), 907. Claimant underwent spinal fusion procedures in 1965 and 1966, and has worked only sporadically since the 1964 work-incident.

On October 10, 1967, claimant filed a claim for benefits under the Act. Pursuant to a

"Memorandum of Conference" issued by the district director<sup>1</sup> on October 11, 1967, employer continued to pay claimant temporary total disability compensation, followed by permanent partial disability compensation, until the then applicable statutory maximum of \$24,000 was reached in January 1972. See 33 U.S.C. §914(m)(repealed 1972). After terminating claimant's compensation payments, employer continued to pay claimant's work-related medical expenses.

Claimant subsequently underwent spinal canal decompressions in 1969 and 1987, and a second spinal fusion in 1988. In June 1988, claimant's attorney notified the district director that claimant is permanently totally disabled due to the 1964 accident, and that claimant wished to reopen his claim under the Act.

Both claimant and employer filed motions for summary judgment; on May 1, 1990, the administrative law judge issued a Summary Decision and Order, in which he initially determined that claimant's claim for additional compensation is not barred pursuant to Section 22 of the Act, 33 U.S.C. §922, since a formal compensation order was never issued in the instant case and, thus, claimant's original claim was still pending. The administrative law judge concluded, however, that since claimant had taken no action on his claim for over 16 years, too much time had passed since the last payment of compensation to permit the claim to be reopened; thus, based on the doctrine of laches, the administrative law judge dismissed the case. Claimant's motion for reconsideration was denied by the administrative law judge on June 13, 1990.

On appeal, claimant contends that the administrative law judge erred in determining that his claim is barred by the doctrine of laches. Employer responds, asserting that the administrative law judge's dismissal of claimant's claim should be affirmed.

The sole issue raised by claimant on appeal is that the administrative law judge erred in finding the instant claim barred by the doctrine of laches. We agree. Initially, we note that it is uncontroverted that claimant timely filed a claim for benefits under the Act in 1967, that a "Memorandum of Conference" was subsequently issued by the district director, and that no formal compensation order was issued in the instant case. The United States Supreme Court, in *Intercounty Construction Co. v. Walter*, 422 U.S. 1, 2 BRBS 3 (1975), held that where, as here, a claim is timely filed under Section 13 of the Act, 33 U.S.C. §913, but is never adjudicated, it remains open and pending until an order is issued. In such cases, the time limitations of Section 22, 33 U.S.C. §922, do not apply. See *Lewis v. Norfolk Shipbuilding & Dry Dock Corp.*, 20 BRBS 126 (1987). Accordingly, based upon the uncontroverted facts of this case, we hold that the administrative law judge properly determined that the limitations contained in Section 22 were inapplicable to the instant claim.

The administrative law judge, however, citing *Rodriguez v. California Stevedore & Ballast Co.*, 16 BRBS 371 (1984), subsequently determined that "the doctrines of laches and/or due process, or just a basic concept of fundamental fairness," prohibited the reopening of the instant claim. See Decision and Order at 5. In *Rodriguez*, 16 BRBS at 371, claimant attempted to withdraw his claim

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<sup>1</sup> Pursuant to Section 702.105 of the regulations, 20 C.F.R. §702.105, the term "district director" has replaced "deputy commissioner" used in the statute.

for a 1967 injury. Although a claims examiner approved the withdrawal, the Board found that the technical requirements for withdrawal or settlement were not met. Nonetheless, without discussion of *Intercounty* the Board held that it was contrary to the purposes of the Act to permit "old" claims to be reopened because certain technical requirements were not met. Unlike *Rodriguez*, in the present case no attempt was made to obtain an order resolving the claim.

Since *Rodriguez* was decided, the Board consistently has applied the holding of the United States Supreme Court in *Intercounty*, and additionally has held that the doctrine of laches does not apply to cases arising under the Act in view of the specific statutes of limitations contained in the Act. See, e.g., *Norton v. National Steel and Shipbuilding Co.*, BRBS , BRB No. 89-451 (May 11, 1993)(*en banc*)(Brown, J., dissenting), *aff'g on recon.* 25 BRBS 79 (1991); *Madrid v. Coast Marine Construction Co.*, 22 BRBS 148 (1989); see also *Director, OWCP v. National Van Lines*, 613 F.2d 972, 11 BRBS 298 (D.C. Cir. 1979), *cert. denied*, 448 U.S. 907 (1980). Based on these recent cases, the Board has found *Rodriguez* to be of limited value. See *Norton, decision on recon.*, slip op. at 8. We therefore reverse the administrative law judge's conclusion that the instant claim is barred by the doctrine of laches, and remand the case for the administrative law judge to consider the nature and extent of claimant's disability resulting from his March 1964 injury.

Accordingly, the administrative law judge's Summary Decision and Order Dismissing Case and Order Denying Motion to Reconsider are reversed, and the case is remanded to the administrative law judge for consideration of claimant's claim.

SO ORDERED.

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge