

BRB No. 07-0746
Case No.04-LHC-01960
OWCP No. 02-130815

P.B.)
)
Claimant-Petitioner)
)
v.)
)
A. G. SHIP MAINTENANCE) DATE ISSUED: 07/27/2007
CORPORATION)
)
and)
)
AMERICAN HOME ASSURANCE)
COMPANY)
)
Employer/Carrier-)
Petitioners) ORDER

Employer filed a Notice of Appeal dated May 24, 2007, of the administrative law judge's Decision and Order Upon Remand From the Benefits Review Board which was filed on April 25, 2007. Employer's appeal is assigned the Board's docket number, BRB No. 07-0746. All future correspondence to the Board must bear this number.

In his initial decision, the administrative law judge found claimant entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), but that employer established rebuttal thereof. Evaluating the evidence as a whole, the administrative law judge found that claimant's eye disorder is causally related to his work for employer. The administrative law judge concluded that claimant is entitled to temporary total disability benefits from December 19, 2000, to March 19, 2001, and from June 27, 2001, until October 6, 2004, and to permanent total disability benefits thereafter, finding that claimant could not return to his usual employment as a lasher and that employer did not establish the availability of suitable alternate employment. Lastly, the administrative law judge concluded that claimant did not establish his entitlement to a Section 14(e) assessment, 33 U.S.C. §914(e).

Employer appealed and claimant cross-appealed this decision. The Board

affirmed the administrative law judge's findings that claimant's eye condition is work-related, and that employer did not establish suitable alternate employment. *P.B. v. A.G. Ship Maintenance Corp.*, BRB Nos. 05-0999 (Aug. 30, 2006) (unpub.). In affirming the administrative law judge's finding that claimant's eye condition is work-related, the Board held that the administrative law judge extensively discussed all of the relevant evidence of record, and rationally accorded greatest weight to Dr. Warren's opinion that claimant's ocular condition is related to his December 19, 2000, work incident. With regard to the administrative law judge's finding that employer did not establish the availability of suitable alternate employment, the Board held that he rationally credited Dr. Rosenberg's testimony, in conjunction with the opinions of Drs. Warren and Kapoor, to find that claimant is incapable of any employment because of his ocular condition. The Board also stated that the administrative law judge rationally rejected the positions identified by Ms. Havassy because they fell beyond the scope of claimant's overall capabilities. Consequently, the Board affirmed the administrative law's finding that claimant is entitled to total disability benefits.

The Board, however, reversed the administrative law judge's finding that the record contained insufficient evidence to determine whether employer is liable for a Section 14(e) assessment. The Board held that the record establishes that claimant was injured in December 2000, that he filed his claim on November 26, 2001, and that employer's only notice of controversion was not timely filed. Noting that additional findings were necessary under Section 14(e), the Board vacated the administrative law judge's denial of a Section 14(e) assessment and remanded the case for further findings.

On remand, the administrative law judge issued an order finding claimant entitled to a Section 14(e) assessment payable by employer. On appeal, employer does not challenge this finding. Rather, employer seeks to have the administrative law judge's Decision and Order Upon Remand From the Benefits Review Board summarily affirmed so that it may appeal the Board's prior decision insofar as it affirms the administrative law judge's findings on the issues of causation and suitable alternate employment. *See* 33 U.S.C. §921(c); 20 C.F.R. §802.410. As employer raises no issues with regard to the administrative law judge's award of a Section 14(e) assessment on remand, and as the Board's previous decision on the issues raised constitutes the law of the case, *see, e.g., Boone v. Newport News Shipbuilding & Dry Dock Co.*, 37 BRBS 1 (2003); *Ravalli v. Pasha Maritime Services*, 36 BRBS 91 (2002), *denying recon. in* 36 BRBS 47 (2002), we grant employer's motion for summary decision. 20 C.F.R. §802.303(b).

Accordingly, employer's Motion for Expedited Summary Decision is granted, and the administrative law judge's Decision and Order Upon Remand From the Benefits Review Board is affirmed. The district director is requested to transmit to the Board the official case record so that it may be forwarded to the Court of Appeals. 20 C.F.R. §§802.209, 802.411.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge