

BRB No. 06-0663
OWCP No. 02-0133375

JAMES BRIAN ZIMMERMAN)	
)	
Claimant-Respondent)	
)	
v.)	
)	
SERVCE EMPLOYERS)	
INTERNATIONAL, INCORPORATED)	
)	
and)	
)	
INSURANCE COMPANY OF THE STATE)	DATE ISSUED: 06/28/2006
OF PENNSYLVANIA)	
)	
Employer/Carrier-)	
Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	ORDER

The Board acknowledges its receipt of employer's timely Notice of Appeal of the Decision and Order on Remand Awarding Benefits (2004-LHC-0927) of Administrative Law Judge Richard D. Mills 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.*, as extended by the Defense Base Act, 42 U.S.C. §1651. 33 U.S.C. §921(a); 20 C.F.R. §802.205. The district director filed this decision on May 18, 2006. Employer's appeal is assigned the Board's docket number BRB No. 06-0663. All future correspondence to the Board must bear this number.

Employer also has filed a motion for an expedited, summary decision. Employer avers that it does not challenge the substance of the administrative law judge's decision on remand, but wishes only to preserve its right to appeal the Board's decision dated February 22, 2006. *Zimmerman v. Service Employers Int'l Inc.*, BRB No. 05-0580 (Feb. 22, 2006); *see* 33 U.S.C. §921(c). In its decision, the Board held that the administrative

law judge properly found that Section 10(a) could not be applied to calculate claimant's average weekly wage, as he was neither a five- nor six-day per week worker. 33 U.S.C. §910(a). With regard to the administrative law judge's calculation of claimant's average weekly wage pursuant to Section 10(c), the Board affirmed the use of only the wages claimant earned while he worked for employer in Kuwait, as these wages reasonably represented claimant's earning capacity at the time of injury. 33 U.S.C. §910(c). The Board thus affirmed the administrative law judge's finding that claimant's average weekly wage is \$1,789.84. The Board, however, remanded the case to the administrative law judge to enter an order addressing the specific disability benefits to which claimant is entitled.

On remand, the administrative law judge awarded claimant continuing temporary total disability benefits commencing May 7, 2003, based on an average weekly wage of \$1,789.84. Employer does not challenge the administrative law judge's award of benefits on remand, and seeks affirmance of that decision so that it may pursue an appeal of the Board's decision affirming the administrative law judge's average weekly wage calculation. We affirm the Board's prior decision, based on the law of the case doctrine. *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). As there is no substantive challenge to the administrative law judge's award of benefits on remand, we affirm the administrative law judge's Decision and Order on Remand Awarding Benefits.

Accordingly, employer's motion for an expedited, summary decision is granted. 20 C.F.R. §802.303(b). The administrative law judge's Decision and Order on Remand Awarding Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge