

BRB Nos. 11-0181
and 11-0181A

JOSEPH TRACY, JR.)	
)	
Claimant-Respondent)	
Cross-Petitioner)	
)	
v.)	
)	
KELLER FOUNDATION/CASE)	DATE ISSUED: 05/04/2011
FOUNDATION)	
)	
and)	
)	
ACE U.S.A./E.S.I.S.)	
)	
Employer/Carrier-)	
Petitioners)	
Cross-Respondents)	
)	
GLOBAL INTERNATIONAL)	
OFFSHORE, LIMITED)	
)	
and)	
)	
LIBERTY MUTUAL INSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	
Respondents)	
Cross-Respondents)	ORDER

Keller Foundation/Case Foundation (Keller) appeals, and claimant cross-appeals, the Decision and Order on Remand (2004-LHC-00698) of Administrative Law Judge Anne Beytin Torkington 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). Claimant has filed a Motion for Summary Decision requesting affirmance of the administrative law judge's decision on remand. 20 C.F.R. §802.219. Keller does not

oppose claimant's motion, and it asks the Board to issue a decision without the need for additional briefing.

To recapitulate, claimant worked for Global Offshore (Global) in Louisiana from October 1995 until approximately February 1996. Between July 1996 and November 1997, claimant worked for Keller in San Diego, California. Thereafter, and until his heart attack in 2002 caused him to stop working, claimant worked for Global on various barges and vessels in the United States and abroad. Claimant filed a claim for benefits under the Act.¹ The administrative law judge found that claimant was a covered employee during his employment with Keller in 1996 and 1997. Keller did not challenge this finding. The administrative law judge also found that claimant was a member of a crew during his employment with Global in the United States in 1998 and that his overseas work with Global thereafter did not satisfy the criteria of Section 3(a) of the Act, 33 U.S.C. §903(a). Thus, she found claimant was not a covered employee during his employment with Global and that Keller is liable for claimant's benefits. The Board affirmed these findings. *J.T. [Tracy] v. Global Int'l Offshore, Ltd.*, 43 BRBS 92 (2009).² The administrative law judge also found that claimant is restricted to the maximum compensation rate in effect in 1997 for benefits for his hearing loss, that claimant's heart condition is not compensable, that Keller established the availability of suitable alternate employment compliant with claimant's upper extremity restrictions and claimant failed to establish diligence in seeking employment and is, therefore, partially disabled, and that claimant's average weekly wage is \$1,409.66. 33 U.S.C. §§906, 908(c)(13)(A), 910(c). With the exception of the average weekly wage finding, which the Board vacated, and the hearing loss disability finding, which the Board modified to reflect a monaural impairment, the Board affirmed the administrative law judge's findings. *Tracy*, 43 BRBS at 100-103. The Board remanded the case for further consideration of the average weekly wage issue.

On remand, the parties stipulated to three potential calculations for claimant's average weekly wage, all of which complied with the Board's instructions. The administrative law judge determined that the calculation which resulted in the mid-range wage was the most reasonable. Thus, she found that claimant's average weekly wage is

¹Claimant suffers from bilateral carpal tunnel syndrome, bilateral arthritis of the hands, bilateral ulnar entrapments, and hearing loss in his left ear. Claimant filed a claim for benefits for his hearing loss, upper extremity trauma, and a heart condition against Global on February 24, 2003. The administrative law judge issued an order joining Keller to the case in September 2005.

²The Board also affirmed the administrative law judge's conclusion that Global was not estopped from defending against coverage as the doctrines of promissory estoppel and equitable estoppel do not apply. *Tracy*, 43 BRBS at 95.

\$2,034.56 based on claimant's total earnings between May 15, 2000, and March 27, 2002. Decision and Order on Remand at 2-3.

Both claimant and Keller appeal the administrative law judge's decision on remand. Claimant requests, and Keller does not oppose, summary affirmance of that decision; claimant specifically notes that his contentions of error concern only the Board's prior decision. As neither party raises any issues with regard to the decision on remand, and the Board's initial decision constitutes the law of the case, *see, e.g., Kirkpatrick v. B.B.I., Inc.*, 39 BRBS 69 (2005); *Schaubert v. Omega Services Industries*, 32 BRBS 233 (1998), claimant's Motion for Summary Decision affirming the administrative law judge's Decision and Order on Remand is granted. 20 C.F.R. §802.303(b).

Accordingly, the administrative law judge's Decision and Order on Remand is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge