



BRB No. 16-0322
Case No. 2011-LDA-00509
OWCP No. 02-201979

CHRISTOPHER KASULE)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
TRIPLE CANOPY)	
)	
and)	
)	
CONTINENTAL CASUALTY COMPANY)	DATE ISSUED: <u>Nov. 17, 2016</u>
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	ORDER

By letter dated March 29, 2016 and received by the Board on April 11, 2016, claimant, who is without legal representation, appeals the July 31, 2015 Decision and Order Awarding Benefits (2002-LDA-00509) of Administrative Law Judge Paul R. Almanza 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), as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.*¹ This appeal is assigned the Board's docket number 16-0322; all correspondence relating to this appeal must bear this number.

¹ It is not clear that claimant served copies of all documents on employer/carrier and its counsel. All documents sent to the Board are being served with this Order on employer/carrier and its counsel.

In his Decision and Order Awarding Benefits, the administrative law judge found that claimant sustained work-related injuries to both eyes. The administrative law judge awarded claimant temporary total disability benefits from January 11, 2010 to August 18, 2013. 33 U.S.C. §908(b). The administrative law judge also found that claimant has a 50 percent impairment to each eye, entitling him to 160 weeks of permanent partial disability benefits. 33 U.S.C. §908(c)(5), (22). The administrative law judge awarded claimant past and future medical benefits for his eye injuries. 33 U.S.C. §907. The administrative law judge denied the claim for a chemical inhalation injury, finding no evidence to show that claimant suffers such an injury. Claimant's notice of appeal to the Board seeks review of the denial of the chemical inhalation claim.

We dismiss claimant's appeal because it was not timely filed. Pursuant to Section 21(a) of the Act, an appeal must be filed within 30 days of the date the administrative law judge's decision is filed by the district director. 33 U.S.C. §921(a); *see* 33 U.S.C. §919(e); 20 C.F.R. §§702.350, 802.205(a). The administrative law judge's July 31, 2015 Decision and Order was filed by the district director on August 11, 2015. Thus, claimant's appeal had to be filed by September 10, 2015 in order to be timely. Although claimant's appeal is timely in relation to the administrative law judge's March 29, 2016 "Notice – Claimant's December 22, 2015 and March 7, 2016 Letters,"² the substance of claimant's appeal makes clear that he is appealing the denial of benefits for a chemical inhalation injury, an issue that was addressed only in the July 31, 2015 Decision and Order. The regulation at 20 C.F.R. §702.393 states that an appeal must be filed "within 30 days of the filing of the decision or order complained of. . . ." As claimant's appeal of the administrative law judge's denial of the chemical inhalation claim was not timely filed with respect to the August 11, 2016 date of filing, we must dismiss claimant's appeal.

Nonetheless, claimant attached to his notice of appeal medical evidence post-dating the close of the record on June 30, 2014. In reports dated September 7, 2015 and March 17, 2016, Dr. Muyondo states that claimant has various ailments due to toxic carbon monoxide he inhaled while working as a tower guard at the Al-Adad Airbase in Iraq. Claimant's notice of appeal and the attached medical records, filed with the Board within one year of the denial of the respiratory claim, are sufficient to state a timely claim for modification pursuant to Section 22 of the Act, 33 U.S.C. §922, based on a mistake in a determination of fact. *See generally Jensen v. Weeks Marine, Inc.*, 346 F.3d 273, 37

² This "Notice" informs claimant that the attorney's fee awarded to his former counsel in a prior order was to be paid by employer and was not deducted from his benefits. The "Notice" also references claimant's allegations regarding the conduct of the administrative law judge and others, and invites claimant to appeal these allegations to the Board. Claimant's appeal to the Board does not reference this "conduct."

BRBS 99(CRT) (2d Cir. 2003); *Moore v. Virginia Int'l Terminals, Inc.*, 35 BRBS 28 (2001). Therefore, we remand this case to the district director to initiate modification proceedings. 20 C.F.R. §702.373.

Accordingly, claimant's appeal is dismissed. The case is remanded to the district director to initiate modification proceedings.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge