

STEVEN WATERS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
GLOBAL TERMINAL AND)	DATE ISSUED: 09/26/2003
CONTAINER SERVICES,)	
INCORPORATED)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Philip J. Rooney (Israel, Adler, Ronca & Gucciardo), New York, New York, for claimant.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (2001-LHC-03144) of Administrative Law Judge Ralph A. Romano 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, working light duty as a parts man in employer's maintenance department, injured his right wrist on June 4, 1998. Claimant had previously injured his right arm on February 26, 1998, and had returned to light duty work with employer on April 9, 1998, with an assistant. In early June 1998, he was told by employer to return to full duty work without an assistant, and subsequently sustained the injury on June 4. On August 27, 1999, employer offered claimant a light duty position at its facility via a letter sent by employer's claims representative to claimant's former address. Claimant did not

receive this letter, but it was received by his counsel. Claimant did not return to work with employer until March 27, 2000, and was provided an assistant upon his return to work. The administrative law judge awarded claimant temporary total disability benefits from June 4, 1998, through August 27, 1999.¹

On appeal, claimant challenges the administrative law judge's denial of disability benefits from August 27, 1999, to March 27, 2000. Claimant argues that the administrative law judge erred in finding that employer established the availability of suitable alternate employment on August 27, 1999. Claimant asserts that employer's proffered light duty job is not within his restrictions and the written offer of this job is deficient in that he did not receive the offer and that it was made by employer's representative rather than employer. Employer did not file a response brief in this matter.

Employer may meet its burden of establishing the availability of suitable alternate employment by offering claimant a job in its facility, including a light duty job. *Darby v. Ingalls Shipbuilding, Inc.*, 99 F.3d 685, 30 BRBS 93(CRT)(5th Cir. 1996). The Board has affirmed a finding of suitable alternate employment where employer offers claimant a job tailored to his specific restrictions so long as the work is necessary. *Larsen v. Golten Marine Co.*, 19 BRBS 54 (1986); *Darden v. Newport News Shipbuilding & Dry Dock Co.*, 12 BRBS 10 (1980).

Claimant first contends that the administrative law judge erred in finding that employer's August 27, 1999, letter offer restored claimant's assistant in his light duty job with employer. Claimant also contends that employer's proffered light duty job was not within his medical restrictions. In his decision, the administrative law judge inferred from employer's letter that it would restore claimant's assistant if claimant returned to his light duty work at its facility.² Decision and Order at 4.

We hold that the administrative law judge rationally inferred from employer's letter that an assistant would be provided if claimant returned to work with employer in August 1999 since an assistant was provided when claimant returned to work with employer in March 2000, and one had been provided in the past. *See generally Todd*

¹ The administrative law judge also awarded claimant medical benefits pursuant to Section 7 of the Act, 33 U.S.C. §907.

² Employer's letter states in relevant part that, "[Employer] continues to take the position that even though injury is in dispute, they are willing to accept you back in the capacity of a parts man in the Maintenance Department, with whatever work restrictions that may be placed upon by your treating physicians," and that, "[Employer's] offer to accommodate any work restrictions you may have, is again being extended. . . ." Emp. Ex. 7 at 1. Employer's offer referred to Dr. Charko's November 1998 work restriction of no heavy work. *Id.* Dr. Charko also restricted claimant to sedentary work, no heavy lifting, and no long periods of writing. Cl. Exs. 2, 5; Tr. at 37.

Shipyards Corp. v. Donovan, 300 F.2d 741 (5th Cir. 1962); Decision and Order at 4-5; Emp. Ex. 7. Moreover, we reject claimant's contention that the job was not within his medical restrictions as employer's job offer specifically states that it is willing to accept claimant back with whatever work restrictions his treating physicians have imposed and will accommodate any of his work restrictions. *See generally Ezell v. Direct Labor, Inc.*, 33 BRBS 19 (1999); *McCullough v. Marathon Letourneau Co.*, 22 BRBS 359 (1989) (Board affirmed administrative law judges' findings that employers established the availability of suitable alternate employment because the jobs employers offered at their facilities were within the claimants' restrictions); Emp. Ex. 7; Cl. Exs. 2, 5; Tr. at 37.

Claimant next contends that employer's job offer was deficient in that it was an offer of employment made by employer's claim's representative and not by employer itself. In the instant case, employer's offer was made by its representative, Mr. Martin, branch manager for Frank Gates Acclaim. We reject claimant's contention and hold that an offer of a suitable job at employer's facility made by employer's representative satisfies employer's burden of establishing the availability of suitable alternate employment. *See, e.g., Arnold v. Nabors Offshore Drilling, Inc.*, 35 BRBS 9 (2001), *aff'd mem.*, 32 Fed. Appx. 126 (5th Cir. 2002)(table)(Board affirmed administrative law judge's finding that employer established the availability of suitable alternate employment based on administrative law judge's acceptance of the testimony of employer's claims manager that claimant was offered a job at employer's facility within his restrictions).

Claimant lastly contends that employer's job offer is deficient in that he did not receive the offer because it was sent to his former address. Claimant asserts that he did not know of the offer until March 2000 when his former wife told him, at a family court hearing, about the contents of the letter offering employment. Cl. Br. at 3; Tr. at 42. Claimant's counsel concedes on appeal that he received a copy of employer's job offer to claimant. The administrative law judge found in relevant part that,

While the letter from Employer restoring Claimant's assistant (EX7) was mailed to an address where Claimant was no longer living, and Claimant states that he never received this offer letter to resume the sedentary job(Tr. at 38-39), there is no doubt that a copy of this letter was mailed to his attorney(EX 7 at 2), and thus constructively known to Claimant.

Decision and Order at 4 (emphasis in original). We hold that the administrative law judge properly found that receipt of employer's light duty job offer by claimant's counsel, who concedes on appeal that he received it, was constructive notice of the offer to claimant. *See generally Stratton v. Weedon Eng'g Co.*, 35 BRBS 1 (2001)(*en banc*)(Board remanded for administrative law judge to reconsider whether employer established availability of suitable alternate employment by offering claimant a light duty job at its facility by, among other actions, sending a letter from employer's counsel to claimant's counsel advising the latter of the offer of employment available to claimant);

Decision and Order at 4; Emp. Ex. 7 at 2; Cl. Br. at 6. Claimant’s attorney is his agent, and as such, should have made known to claimant employer’s written offer. *See generally McCarthy v. Recordex Serv., Inc.*, 80 F.3d 842, 853 (3d Cir. 1996), *cert. denied*, 519 U.S. 825 (1996)(the court acknowledging as “beyond cavil that the attorney-client relationship is an agent-principal relationship”); *see also Link v. Wabash R.R. Co.*, 370 U.S. 626, 634, *reh’g denied*, 371 U.S. 873 (1962)(Court stated that “each party is deemed bound by the acts of his lawyer-agent and is considered to have ‘notice of all facts, notice of which can be charged upon the attorney’”). Thus, notice to claimant’s counsel of employer’s offer of employment is notice to claimant. Consequently, we affirm the administrative law judge’s finding that employer established the availability of suitable alternate employment on August 27, 1999.

Accordingly, the administrative law judge’s Decision and Order is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge