

BRB No. 96-530

MARTIN J. NEELY)	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED: _____
BATH IRON WORKS)	
CORPORATION)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Gary A. Gabree (Stinson, Lupton, Weiss & Gabree, P.A.), Bath, Maine, for claimant.

Stephen Hessert (Norman, Hanson & DeTroy), Portland, Maine, for self-insured employer.

Before: SMITH, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (95-LHC-879) of Administrative Law Judge Jeffrey Tureck 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 administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant sustained a back injury on September 29-30, 1992. He was temporarily totally disabled from October 5 through October 11, 1992, and again from October 12 through October 18, 1992. Claimant notified employer of his injury and employer filed its First Report of Injury, Form LS-202, under the Act on October 2, 1992. Cl. Ex. 14. Employer controverted the claim on October 6, 1992, on the ground that claimant was pursuing his benefits under state law. Cl. Ex. 15. Employer then paid disability and medical benefits pursuant to the Maine Workers' Compensation Act.

On May 4, 1994, claimant pursued his claim under the Act by filing a claim for compensation. Cl. Ex. 16. He sought no additional benefits, but he requested employer's acknowledgment of his "right to benefits" under the Act, specifically, by filing forms LS-206

(Payment of Compensation without an Award) and LS-208 (Notice of Final Payment), pursuant to Section 14(c), (g), 33 U.S.C. §914(c), (g). On June 9, 1994, employer filed a notice of controversion, disputing the fact of injury, the nature and extent of disability, the timeliness of the claim, and the responsible carrier. Cl. Ex. 17. It also filed an answer to claimant's claim, denying all aspects thereof. Cl. Ex. 18. On December 23, 1994, the district director rejected claimant's request for an informal conference, stating that claimant's claim under the Act was tolled by virtue of employer's payments under the state Act, and denying his request that employer be ordered to file an LS-208, as its payments were made under the state law. Cl. Ex. 19. Therefore, claimant requested a formal hearing and, on January 3, 1995, filed his Pre-Hearing Statement, identifying medical benefits and an attorney's fee as the disputed issues. Cl. Ex. 20.

The administrative law judge denied both claimant's request that employer be required to file certain forms and his claim, finding that payments have been made under state law and no additional benefits have been sought under the Act. As no benefits were paid under the Act, he concluded that nothing in the Act compels employer to file these forms. Moreover, the administrative law judge noted that claimant did not identify how he is prejudiced by employer's failure to file the forms, as claimant's filing of his claim for compensation tolls the statute of limitations and protects him indefinitely. Decision and Order at 2. Claimant now appeals this decision, and employer responds, urging affirmance.¹

Claimant contends the administrative law judge erred in failing to find that: his claim is compensable under the Act; payments made under the Maine Act are also required under the Longshore Act; employer is liable for these payments and should be ordered to file the appropriate forms and acknowledge its liability under the Act; and employer is liable for payment of the Section 14(g) penalty and for an attorney's fee. Employer disputes these contentions. It argues that: the parties stipulated to the fact that payment was made under the Maine Act and not the Longshore Act, thereby making the filing of Longshore Act forms unnecessary; the Section 3(e), 33 U.S.C. §903(e), credit protects employer from double liability and, as employer paid benefits under Maine law and no benefits are sought under the Act, no controversy exists under the Act; the filing of those forms would not benefit claimant; and even if employer is required to file the forms, counsel is not entitled to an attorney's fee because there has been no successful prosecution or additional benefits awarded in this case.

¹Claimant filed a supplemental letter of authorities. The Board hereby accepts this letter as part of the record in this case.

Section 14(c) of the Act requires employers to immediately notify the district director of the first payment of benefits or any suspension thereof. 33 U.S.C. §914(c). Section 14(g) requires employers to notify the district director within 16 days of the final payment of benefits. Failure to do so results in a civil fine of \$100. 33 U.S.C. §914(g). Section 14(a) of the Act states:

Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled thereto, without an award, except where liability to pay compensation is controverted by the employer.

33 U.S.C. §914(a) (emphasis added). Read in conjunction with subsection (a), subsections (c) and (g) clearly refer only to compensation which is paid under the Act. Thus, payments made under another compensation law need not be reported to the district director on forms provided by the Secretary under this Act. Therefore, we agree with the administrative law judge's conclusion that payments made under the Maine Act do not compel employer to file forms LS-206 or LS-208 in compliance with Section 14 of the Longshore Act.

Further, although the Act permits a claimant to receive concurrent state and federal awards, Section 3(e), 33 U.S.C. §903(e), provides the employer with a credit and protects it from double payment. *See Sun Ship, Inc. v. Pennsylvania*, 447 U.S. 715, 12 BRBS 890 (1980); *Stewart v. Bath Iron Works Corp.*, 25 BRBS 151 (1991). This section is not invoked unless there are two existing awards. *Kinnes v. General Dynamics Corp.*, 25 BRBS 311 (1992).² Because claimant stipulated that he is not seeking additional benefits under the Act, and because all benefits to which he is entitled have been paid under the state law, the administrative law judge properly denied claimant an award of benefits under the Act in this case. In "dual liability" cases, payments made under the state statute also erase liability

²In *Kinnes*, the claimant sustained a back injury at work. While the formal action under the Act was pending, she filed a claim for and was awarded state benefits. She then continued her claim under the Act, seeking additional temporary total disability benefits and an attorney's fee. At the hearing, employer stipulated to claimant's entitlement to benefits under the Act, nevertheless, the administrative law judge denied both benefits and the fee. The Board reversed his decision and remanded for entry of an award of benefits because employer stipulated to its liability under the Act and because, for Section 3(e) to apply, there must be "liability imposed" by the Act: claimant's mere agreement that Section 3(e) applies does not mean the federal award should not be entered. *Kinnes*, 25 BRBS at 312-313. However, *Kinnes* is distinguishable from the case at bar because the claimant in that case filed a claim for additional benefits under the Act whereas here claimant seeks no further compensation on which to base an award.

under the federal statute. *Reich v. Bath Iron Works Corp.*, 42 F.3d 74, 29 BRBS 11 (CRT) (1st Cir. 1994). Consequently, as claimant requests only that employer be ordered to file certain forms under the Act, and as the forms are meaningless in the absence of any federal benefits to report, we affirm the administrative law judge's decision.³

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

³In light of our decision herein, we need not address claimant's argument regarding counsel's entitlement to an attorney's fee. However, we note that as claimant has neither sought nor been awarded additional benefits beyond those voluntarily paid by employer, counsel is not entitled to a fee. 33 U.S.C. §928(b); *see generally Krause v. Bethlehem Steel Corp.*, 29 BRBS 65 (1992).