U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 22-0066

CAROL A. GRIMM (Widow of ROBERT GRIMM) Claimant-Respondent v. KBR, INCORPORATED and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA c/o AIG GLOBAL CLAIMS Employer/Carrier-Petitioners SEACOR ENVIRONMENTAL SERVICES INCORPORATED and SEACOR RESPONSE INCORPORATED (f/k/a INTERNATIONAL RESPONSE CORPORATION) Employer-Respondent DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Respondent	)	DATE ISSUED: 4/26/2023 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits and the Decision and Order on Reconsideration of Scott R. Morris, Administrative Law Judge, United States Department of Labor.

Taylor Hanks (Mara Law Firm, PC), San Diego, California, for Claimant.

Sidney W. Degan, III, Foster P. Nash, Philip C. Brickman, and Carolyn K. Kolbe (Degan, Blanchard & Nash), New Orleans, Louisiana, for Employer/Carrier KBR, Inc., and AIG.

Mary Holmesly (Resnick & Louis, P.C.), Houston, Texas, for Employer SEACOR Environmental Services Inc. and SEACOR Response Inc. (f/k/a International Response Corporation).

Matthew W. Boyle (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: GRESH, Chief Administrative Appeals Judge, ROLFE and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer Kellogg, Brown & Root (KBR) appeals Administrative Law Judge (ALJ) Scott R. Morris's Decision and Order and Decision and Order on Reconsideration (2020-LDA-00219) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq*. (Act), as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq*. (DBA).[1] We must affirm the ALJ's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

[1] This case arises within the jurisdiction of the United States Court of Appeals for the Second Circuit because the district director who filed the ALJ's decision is in New York. 33 U.S.C. §921(c); *McDonald v. Aecom Tech. Corp.*, 45 BRBS 45 (2011).

In March 2003, International Response Corporation (IRC),[2] a subsidiary of SEACOR Environmental Services, Inc. (SEACOR),[3] hired Decedent Robert Grimm as a supervisor. Decision and Order Awarding Benefits (D&O) at 3; Joint Exhibit (JX) 54 at 15; JX 68 at 1. IRC was in the business of oil spill response, containment, and remediation services.[4] D&O at 3; JX 2 at 10. Decedent previously worked for National Response Corporation (NRC),[5] another subsidiary of SEACOR, from 1994 until 2002, when he was terminated for cause. D&O at 3; JX 65 at 3 (transcript p. 7); JX 66 at 4; JX 68 at 1; JX 69 at 2, 7. Upon being hired by IRC, Decedent initially reported to the island of Crete, where he assisted in providing standby emergency response services to the United States Navy Supervisor of Salvage and Diving. D&O at 4; JX 54 at 15. Upon completion of the project in Crete, IRC sent Decedent directly to Kuwait, to work as a supervisor on an oil spill response, containment and remediation project for contractor and respondent KBR,[6] pursuant to KBR's contract with the United States Army Corps of Engineers. D&O at 3-4; JX 1 at 1; JXs 2, 22, 45-46, 79.

Decedent began working in Kuwait as a supervisor for IRC on March 28, 2003, and worked every day through April 9, 2003. D&O at 4; JXs 3-13, 41-42. On April 10, 2003, Decedent had a day off. He and another IRC supervisor spent the day near the Kuwait/Iraq border delivering water to Irish Brigade troops. D&O at 4; JX 30 at 19. Tragically, they were involved in a car accident resulting in Decedent's death from traumatic injuries. D&O at 4; JXs 16-17, 29-30; Claimant's Exhibit (CX 2) at 6, 8.

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[2] In 2008, IRC's name was changed to SEACOR Environmental Services (International) Inc., and in 2011, its name was changed to SEACOR Response Inc. D&O at 4-5; JX 68 at 1. For the sake of clarity, we will continue to refer to the entity in question as IRC.

[3] SEACOR Environmental Services, Inc. is a subsidiary of parent company SEACOR Holdings, Inc., which is still operational today. D&O at 4, n.4; JX 65 at 3 (transcript pp. 6-7); JX 68 at 1.

[4] IRC has not been operational for approximately six years or more. D&O at 5, n.5; JX 65 at 11 (transcript p. 39); JX 81 at 3.

[5] NRC was also in the business of oil spill response, containment, and remediation services. JX 2 at 10. SEACOR sold NRC in March 2012. D&O at 5; JX 65 at 3 (transcript p. 7); JX 68 at 1.

[6] Pursuant to the Master Agreement between KBR and IRC, effective March 22, 2003, KBR was the General Contractor, and IRC was the Subcontractor. D&O at 3; JX 26 at 1.

Internal emails establish IRC became aware of Decedent's death on the day it occurred. JX 70. A letter from the United States Embassy in Kuwait, dated April 14, 2003, indicated the Embassy learned of Decedent's death through his "local employer, Brown & Root." D&O at 4; JX 18. IRC representatives handled notice to Claimant of Decedent's death, as well as repatriation of Decedent's belongings and issuance of his death certificate. D&O at 4; JXs 19, 43, 48, 64, 70.

On August 2, 2017, Decedent's widow, Claimant Carol A. Grimm, filed a claim for death benefits under the DBA against KBR. D&O at 2; JX 49. On June 26, 2019, she filed a First Amended Claim, adding IRC as an additional employer. D&O at 2; JX 50. Eventually, she added both NRC and SEACOR as potential employers. The Insurance Company of the State of Pennsylvania (INCSOP) is also a party to the claim, as KBR's carrier.

The parties raised the following issues before the ALJ: coverage under the DBA, 42 U.S.C. §1651 *et seq.*; timeliness of the notice of injury under 33 U.S.C. §912; timeliness of the claim under 33 U.S.C. §913; responsible employer; whether Decedent's death arose out of and in the course of his employment; carrier liability; average weekly wage (AWW); compensation rate; and Claimant's entitlement to death benefits, 33 U.S.C. §909. D&O at 3. Instead of holding a formal hearing, the ALJ decided the claim on the record and the parties' briefs.

The ALJ found the claim to be covered under the DBA by virtue of Decedent's employment in Kuwait pursuant to contracts between IRC, KBR, and the U.S. Army Corps of Engineers. D&O at 7. Further, the ALJ found any failure to give notice on Claimant's part, in accordance with Section 12(a), 33 U.S.C. §912(a), did not bar her claim, as the evidence showed all potentially responsible employers had knowledge of Decedent's death shortly after it happened. Additionally, the ALJ found, due to the corporate relationship between NRC, IRC, and SEACOR, any knowledge on the part of one entity imputed to all three. D&O at 8. Having established all employers had knowledge of Decedent's death and the basis for Claimant's potential claim under the DBA, the ALJ determined none of them filed a report of injury or death with the U. S. Department of Labor as required under Section 30(a) of the Act. 33 U.S.C. §930(a). Consequently, he found Section 13(a)'s one-year statute of limitations for filing a claim was tolled in accordance with Section 13(f), 33 U.S.C. §913(a), (f), and Claimant's claim for benefits was timely, despite being filed fourteen (14) years after Decedent's death. D&O at 9-10.

The ALJ next analyzed which respondent was the responsible employer. D&O at 10. He eliminated NRC as an employer as there was no evidence to support an employment relationship at the time of Decedent's death. *Id*. Applying the "relative nature of the work test," he found the evidence established IRC was Decedent's employer at the time of his

death. D&O at 10-11. The ALJ concluded Claimant invoked the Section 20(a) presumption of compensability, and IRC failed to rebut it. 33 U.S.C. §920(a); D&O at 13-15. He found Decedent's death occurred within the "zone of special danger," and therefore Claimant's claim was compensable as a matter of law. D&O at 15-17.

Having found Decedent suffered a compensable injury while employed by IRC, the ALJ concluded liability statutorily fell on IRC's carrier at the time of Decedent's death. D&O at 17. However, as there was no evidence showing IRC carried DBA insurance at the time of Decedent's death and considering the contractor-subcontractor relationship between KBR and IRC, the ALJ found KBR, as contractor, and its carrier liable for Claimant's death benefits pursuant to 33 U.S.C. §904(a). D&O at 18-19.

KBR subsequently filed a Motion for Reconsideration with the ALJ. Only two of the issues KBR raised for reconsideration are relevant to this appeal: the ALJ's assumptions regarding carrier status and the ALJ's finding that KBR was primarily liable for benefits. Decision and Order on Reconsideration (Recon. D&O) at 3. KBR argued the ALJ erred in accepting IRC's representation that it lacked DBA coverage while simultaneously finding it "implausible" KBR would not have the same coverage. *Id*. at 3. In addition, KBR argued Section 4 of the Act shifted liability to a contractor only if the subcontractor did not have coverage *and* was unable to pay benefits itself. *Id*. at 5.

The ALJ declined to disturb his findings with respect to both carrier status and KBR's liability. Recon. D&O at 5. He stated "[c]ontrary to KBR's argument, the Tribunal clearly found in its Decision and Order that AIG is KBR's carrier."[7] Recon. D&O at 5, n.4. Further, assuming KBR was correct in stating it was only liable if IRC did not have DBA coverage *and* was unable to pay the award, the ALJ noted KBR provided no evidence, beyond mere speculation, that IRC was financially capable of paying benefits in the first instance. He therefore reiterated his original conclusion as to KBR's liability. Recon. D&O at 5.

KBR appeals the ALJ's Decision and Order Awarding Benefits and Decision and Order on Reconsideration, raising three issues: 1) whether the ALJ erred in finding Claimant's claim was timely noticed and filed; 2) whether the ALJ erred in finding KBR liable for benefits pursuant to Section 4(a) of the Act; and 3) whether the case should be remanded for limited discovery on the issue of IRC's financial capability of securing the payment of benefits.

[7] As the Director noted, AIG was the parent company of INCSOP, KBR's carrier, and administered INCSOP's claim.

Claimant, IRC, and the Director, Office of Workers' Compensation Programs (Director), respond, urging affirmance of the ALJ's decisions. However, Claimant also seeks remand for the ALJ to address her request for an assessment under Section 14(e), 33 U.S.C. §914(e), an issue she raised before the ALJ but which he did not consider. KBR replies, arguing the Board cannot address Claimant's request for application of Section 14(e), as she failed to file a cross-appeal, and also arguing the ALJ should have ordered benefits be paid out of the Special Fund, 33 U.S.C. §918(b), due to IRC/SEACOR's insolvency, prior to shifting liability to KBR. Claimant and IRC jointly filed a sur-reply to KBR's reply, maintaining the additional discovery KBR seeks has already been conducted.

Timeliness

Under Section 12(a), a claimant must give written notice of death within thirty days of the death, or within thirty days after she knew or should have known of the relationship between the death and the decedent's employment. 33 U.S.C. §912(a). However, under Section 12(d), failure to file timely notice will not bar a claim for compensation if, among other reasons, the employer, carrier, or designated official has actual knowledge of the injury or death. 33 U.S.C. §912(d).

Section 13(a) provides a claimant with one year from the date of the death to file a claim for death benefits under the Act. 33 U.S.C. §913(a); *Wilson v. Vecco Concrete Constr. Co.*, 16 BRBS 22, 25 n.2 (1983); *Stark v. Bethlehem Steel Corp.*, 6 BRBS 600, 603-604 (1977). However, the statute of limitations is tolled when an employer has notice or knowledge of the death but fails to file a report of death in accordance with Section 30(a). 33 U.S.C. §§913(f), 930(a); 20 C.F.R. §702.205.

Both Sections 12 and 13 must be considered in conjunction with Section 20(b) of the Act, which contains a presumption that both the notice and claim are timely in the absence of substantial evidence to the contrary. 33 U.S.C. §920(b); *Shaller v. Cramp Shipbuilding & Dry Dock Co.*, 23 BRBS 140 (1989). To rebut the presumption as to notice, the employer must produce evidence to show it did not have knowledge of the injury or death and was prejudiced by the late notice. *Cox v. Brady-Hamilton Stevedore Co.*, 25 BRBS 203 (1991). To rebut the presumption as to Section 13, the employer must show the claim was not filed within the required time after the claimant's "awareness." *E.M [Mechler] v. Dyncorp Int'l*, 42 BRBS 73 (2008), *aff'd sub nom. Dyncorp Int'l v. Director, OWCP*, 658 F.3d 133, 45 BRBS 61(CRT) (2d Cir. 2011). This burden includes establishing it filed a first report of injury or death in accordance with Section 30(a). *Blanding v. Director, OWCP*, 186 F.3d 232, 33 BRBS 114(CRT) (2d Cir. 1999).

Here, the evidence unequivocally shows Decedent's employer, IRC, had knowledge of his death shortly after it occurred; therefore, Claimant's failure to give formal notice of

her husband's death does not bar the claim. 33 U.S.C. §§912(a), (d). Further, despite knowledge of the death, there is no evidence IRC filed a report of injury or death with the U.S. Department of Labor in accordance with Section 30(a). 33 U.S.C. §930(a). Consequently, the one-year statute of limitations found within Section 13 was tolled, IRC cannot rebut the Section 20(b) presumption of timeliness, and the ALJ properly found Claimant's notice and claim to be timely filed. 33 U.S.C. §913(a), (f); *Blanding*; 186 F.3d 232, 33 BRBS 114(CRT).

KBR attempts to conflate the issue of its potential liability as general contractor with the issue of timeliness by arguing Claimant's claim is untimely as to KBR because it was never under an obligation to file a report of injury or death in accordance with Section 30(a) of the Act. This argument fails. Sections 12 and 13 govern the timeliness of Claimant's notice and claim; they do not address liability among potentially responsible parties. *Reposky v. Int'l Transp. Services*, 40 BRBS 65 (2006); *Kirkpatrick v. B.B.I., Inc.*, 38 BRBS 27 (2004). As the ALJ noted, the evidence shows both KBR and IRC had actual knowledge of Decedent's death on the day it occurred, yet no employer filed a report of injury or death. Under Sections 12, 13, 20(b), and 30(a), the ALJ properly found these facts result in timely notice and a timely filed claim, regardless of which party is ultimately found responsible for benefits. 33 U.S.C. §§912, 913, 920(b), 930(a); *Reposky*, 40 BRBS 65; *Kirkpatrick*, 38 BRBS 27. We affirm his finding.

Responsible Carrier/Liability under Section 4(a)

A contractor-subcontractor relationship undisputedly existed between KBR and IRC in April 2003, and KBR does not raise this issue as the reason it is not liable for benefits. Rather, KBR denies its liability because: 1) the ALJ incorrectly assumed IRC did not have DBA insurance at the time of the accident; and 2) even if IRC was uninsured, the ALJ should have first determined whether it was financially able to pay benefits itself, prior to shifting liability to KBR.

KBR first argues the ALJ improperly assumed IRC lacked DBA insurance coverage. The ALJ acknowledged the evidence showed IRC had "workers' compensation insurance in some capacity," but found IRC lacked coverage against DBA claims based on its assertion that it did not have DBA insurance or could not find proof of such coverage at the time of Decedent's death. D&O at 17; JX 2 at 54, 64; JX 65 at 4 (transcript p. 12); JX 77 at 1-2; JX 81 at 6.

The ALJ acted within his discretion in finding IRC was not insured against DBA claims based on the evidence in the record. *Banks v. Chicago Grain Trimmers Ass'n*, 390 U.S. 459 (1968); *O'Keeffe*, 380 U.S. 359. In reviewing findings of fact, the Board may not reweigh the evidence, but may only inquire into the existence of evidence to support the

findings. *Sea-Land Services, Inc., v. Director, OWCP [Ceasar]*, 949 F.3d 921, 54 BRBS 9(CRT) (5th Cir. 2020); *LaFaille v. Benefits Review Board*, 884 F.2d 54, 60-61, 22 BRBS 108, 119-120(CRT) (2d Cir. 1989); 20 C.F.R. §802.301. Here, the record contains substantial evidence, or "relevant evidence that a reasonable mind might accept as adequate to support a conclusion," *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951), supporting IRC's lack of coverage. IRC and its corporate representative repeatedly maintained they could find no evidence of DBA coverage, and despite the inclusion of several Certificates of Insurance in the record, none specifically establish DBA coverage at the time of Decedent's death. KBR further failed to establish coverage despite unfettered discovery in this case. Although the ALJ is duty bound to inquire into all matters and relevant evidence before him, 20 C.F.R. §702.338, the duty to develop that evidence lies with the parties. *Smith v. Ingalls Shipbuilding Division, Litton Systems Inc.*, 22 BRBS 46, 50 (1989); *Sam v. Loffland Bros. Co.*, 19 BRBS 228, 230 (1987). KBR's disagreement with the ALJ's conclusion does not justify overturning it if it is based on substantial evidence on the record as a whole -- as it is here. *Compton v. Avondale Indus., Inc.*, 33 BRBS 174, 177 (1999).

KBR also contends the ALJ erred in failing to determine whether IRC was financially incapable of paying benefits prior to shifting liability to KBR. However, this is not a requirement of the Act. Section 4(a) states, in pertinent part:

> In the case of an employer who is a subcontractor, only if such subcontractor fails to secure the payment of compensation shall the contractor be liable for and be required to secure the payment of compensation.

33 U.S.C. §904(a). The Act explicitly provides two ways for an employer to secure the payment of compensation: 1) by obtaining insurance from an authorized workers' compensation liability carrier; or 2) by obtaining authorization from the U.S. Department of Labor to self-insure. 33 US.C. §932(a). Neither of these support KBR's insistence that IRC be found financially incapable of paying before liability can shift to KBR.

KBR rests its argument on a single statement from *Probst v. S. Rowe & Co.*, 379 F.2d 763 (5th Cir. 1967). The primary issue in *Probst* was whether the general contractor's potential liability under Section 4 of the Act, 33 U.S.C. §904, entitled it to an employer's blanket immunity under Section 5 of the Act, 33 U.S.C. §905. The United States Court of Appeals for the Fifth Circuit held it did not, instead holding the general contractor's liability under Section 4 to be "secondary [and] protective."[8] *Probst*, 379 F.2d at 766-767.

[8] The United States Supreme Court overruled this holding in 1984 in *Washington Metropolitan Area Transit Authority v. Johnson [WMATA]*, 467 U.S. 925 (1984), which held the Act granted general contractors blanket immunity from its subcontractors'

The court focused on the fact that a general contractor's potential liability under Section 4 occurred only in very limited circumstances:

> About the only time then that the injured worker has to pursue the general contractor under § 904 is when the subcontractor has failed to secure payment of compensation with an approved insurance carrier, § 932, ***and the subcontractor is financially unable to respond for compensation benefits***.

Id. at 766-767 (emphasis added).

KBR relies on the final clause to argue the ALJ must find IRC financially incapable of providing benefits before shifting liability to KBR as the general contractor. But that language -- from an out-of-circuit case -- is dicta: *Probst* did not involve a general contractor's liability under Section 4, and the court did not address the general contractor's potential immunity if it was required to pay benefits pursuant to it. *Probst*, 379 F.2d at 767. KBR has failed to provide any other support for its position. We therefore affirm the ALJ's conclusion that a subcontractor's lack of insurance coverage, on its own, is sufficient to trigger a general contractor's liability under the plain language of Sections 4(a) and 32 of the Act.[9] 33 U.S.C. §§904(a), 932; *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475, 26 BRBS 49, 51(CRT) (1992); *Thornton v. Northrop Grumman Shipbuilding, Inc.*, 44 BRBS 111, 112 (2010); *Carle v. Georgetown Builders, Inc.*, 19 BRBS 158 (1986). Consequently, we further reject KBR's assertion that remand is necessary to investigate IRC's financial status.

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employees' tort suits "unless the [general] contractor has neglected to secure workers' compensation coverage after the subcontractor failed to do so." *Id*. at 938. Three months later, Congress approved a bill amending Section 4 of the Act, expressly overturning *WMATA* and reinstating the general contractor rule as the Fifth Circuit interpreted it in *Probst. West. v. Kerr-McGee Corp.*, 765 F.2d 526, 529-530 (5th Cir. 1985).

[9] We decline to address KBR's assertion that Claimant's judgment first should have been paid out of the Special Fund due to IRC's insolvency. Not only is such a requirement not in the Act, 33 U.S.C. §904, but KBR also did not present it before the ALJ; it was raised for the first time in KBR's Reply Brief in Support of its Petition for Review. *Island Creek Coal Co. v. Wilkerson*, 910 F.3d 254, 52 BRBS 37(CRT) (6th Cir. 2018); *Johnston v. Hayward Baker*, 48 BRBS 59, 63 (2014); *Z.S. v. Science Applications Int'l Corp.*, 42 BRBS 87, 89 (2008). Moreover, this new argument appears to contradict KBR's assertion that the ALJ must first make a finding as to IRC's inability to pay.

Section 14(e) Assessment

Claimant argues the case must be remanded for the ALJ to consider her request for an additional ten percent assessment in accordance with Section 14(e) of the Act. 33 U.S.C. §914(e). KBR maintains the Board is not allowed to address this issue, as Claimant raised it in a response brief, instead of filing a cross-appeal.

Generally, the Board will not consider issues not addressed by the ALJ below but raised by a respondent in an appeal without a cross-appeal, especially if the argument will disturb the ALJ's ultimate decision. 20 C.F.R. §802.212(b); *see also Burgo v. General Dynamics Corp.*, 122 F.3d 140, 145, 31 BRBS 97, 100-101(CRT), *reh'g denied*, 128 F.3d 801 (2d Cir. 1997), *cert. denied*, 523 U.S. 1136 (1998); *Castronova v. General Dynamics Corp.*, 20 BRBS 139, 141 n.4 (1987); *Del Vacchio v. Sun Shipbuilding & Dry Dock Co.*, 16 BRBS 190, 193 (1984). However, the Board has also held imposition of the Section 14(e) assessment is mandatory and therefore can be raised at any time. *Scott v. Tug Mate, Inc.*, 22 BRBS 164 (1989); *McKee v. D.E. Foster Co.*, 14 BRBS 513 (1981); *Burke v. San Leandro Boat Works*, 14 BRBS 198 (1981). In fact, the Board has addressed the issue when the Director raised it on behalf of a claimant for the first time on appeal, *Cooper v. Cooper Associates, Inc.*, 7 BRBS 853 (1978), *aff'd in pert. part sub nom. Director, OWCP v. Cooper Associates, Inc.*, 607 F.2d 1385, 10 BRBS 1058 (D.C. Cir. 1979), and in a response brief, *Burke*, 14 BRBS at 203. Consequently, the issue of Claimant's entitlement to the Section 14(e) assessment of additional compensation is properly before the Board, even absent a cross-appeal.

Section 14(e) of the Act provides claimants with an additional ten percent assessment added to unpaid installments of compensation if an employer fails to pay compensation voluntarily within fourteen days after it becomes due. 33 U.S.C. §914(e). There are two exceptions to this mandatory assessment: 1) if the employer filed a timely notice of controversion; or 2) if employer can show it could not make timely payments due to circumstances beyond its control. *Id*. As a result, imposition of the assessment cannot occur without first giving the employer "an opportunity to make that showing." *Prolerized New England Co. v. Benefits Review Board*, 637 F.2d 30, 39, 12 BRBS 808, 819 (1st Cir. 1980), *cert. denied*, 452 U.S. 938 (1981). Here, Claimant first raised the issue of her entitlement to the Section 14(e) assessment in her Pre-Hearing Statement to the ALJ, and again in her brief to the ALJ. There was no hearing; rather, all parties' briefs were submitted to the ALJ simultaneously, and none of the respondents' briefs to the ALJ addressed Section 14(e). The ALJ did not address Claimant's request.

The Board has held an ALJ should adjudicate all issues before him in one proceeding to avoid piecemeal litigation and procedural delays. *Hudnall v. Jacksonville Shipyards*, 17 BRBS 174 (1985); *Mayfield v. Atl. & Gulf Stevedores*, 16 BRBS 228 (1984).

The ALJ's failure to address an issue unequivocally before him is clear error. Moreover, as the application of the Section 14(e) assessment potentially involves questions of fact, remand is necessary for a determination of Claimant's entitlement to additional compensation under Section 14(e).

Accordingly, we affirm the Decision and Order Awarding Benefits and the Decision and Order on Reconsideration; however, we remand the case for consideration of Claimant's entitlement under Section 14(e) of the Act.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge