

U.S. Department of Labor

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



BRB No. 24-0313

WILLIAM PRICE)
)
 Claimant-Petitioner)
)
 v.)
)
 DEPARTMENT OF THE AIR FORCE)
)
 and)
)
 AIR FORCE INSURANCE FUND)
)
 Employer/Carrier-)
 Respondents)

NOT-PUBLISHED

DATE ISSUED: 02/10/2026

DECISION and ORDER

Appeal of the Order on Remand of Patrick M. Rosenow, Administrative Law Judge, United States Department of Labor.

William Price, Baker, Florida.

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

PER CURIAM:

Claimant, without representation, appeals Administrative Law Judge (ALJ) Patrick M. Rosenow’s Order on Remand (2019-LHC-00184) rendered on a claim filed pursuant to the Longshore and Harbor Workers’ Compensation Act, as amended, 33 U.S.C. §§901-950 (Act), as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §§8171-8173. 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 applicable law.¹ 33 U.S.C. §921(b)(3); *O’Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

This is the second time this case is before the Benefits Review Board. The facts and issues are the same. On January 30, 1997, Claimant injured his right shoulder while working as a mechanic for Employer. He received chiropractic treatment for his injury from Dr. Al Fulford, who diagnosed Claimant with a right shoulder sprain/strain and recommended he take time off work to recover. Despite Dr. Fulford’s recommendation, Claimant briefly returned to his usual work from February 6 to February 8, 1997. On March 19, 1997, Dr. Fulford opined Claimant could perform his regular work duties; however, Claimant never returned to work and was terminated by Employer on April 8, 1997, for job abandonment.

In his first Decision and Order, the ALJ found Claimant sustained a temporary aggravation of a pre-existing right shoulder condition and was unable to perform his usual work from February 9, 1997, to March 18, 1997. He found Employer identified available suitable alternate employment (SAE) in its 1999 labor market survey showing jobs consistent with what Claimant testified he could do after his injury. The ALJ therefore awarded temporary partial disability (TPD) benefits from February 9, 1997, to March 18, 1997, based on the difference between Claimant’s stipulated average weekly wage of \$350 and his post-injury wage-earning capacity of \$244.80. He denied Claimant’s claim for additional disability compensation.

Claimant appealed the ALJ’s decision to the Board, and the Board vacated the ALJ’s finding that Employer established available SAE during the period Claimant was unable to return to his usual work. Given Claimant established a prima facie case of total disability, the Board held as a matter of law he was entitled to temporary total disability (TTD) benefits rather than TPD benefits. *Price v. Dep’t of the Air Force*, BRB No. 20-0276, slip op. at 7 (July 26, 2022). It therefore modified the ALJ’s decision to reflect Claimant’s entitlement to TTD benefits between February 9, 1997, and March 18, 1997, and remanded the case for calculation of the award. The Board otherwise affirmed the remainder of the ALJ’s decision, including the denial of additional benefits, as his findings and credibility determinations were rational, supported by substantial evidence, and in accordance with law. *Id.*; see 33 U.S.C. §921(b)(3); 20 C.F.R. §802.301.

¹ This case arises within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit because Claimant sustained his injury in Florida. 33 U.S.C. §921(c); 5 U.S.C. §8171(d); see *Roberts v. Custom Ship Interiors*, 35 BRBS 65, 67 n.2 (2001), *aff’d*, 300 F.3d 510 (4th Cir. 2002); 20 C.F.R. §§702.201(a), 704.401.

Before the new award could be calculated on remand, Claimant appealed the denial of additional disability to the United States Court of Appeals for the Eleventh Circuit. The court dismissed the appeal, finding it had no jurisdiction to review the case because the Board's decision was not a final order under the Act. *Price v. Dep't of the Air Force*, No. 22-12652 (11th Cir. Feb. 23, 2023)

After the Board received the case from the Eleventh Circuit and remanded it to the ALJ, the ALJ initiated remand proceedings and allowed the parties an opportunity to address the Board's decision and the remand instructions. Remand Order at 2. Claimant filed a letter reiterating that he has not recovered from his injury and is unable to return to work for Employer because of his restrictions. Then, pursuant to the Board's remand instructions, the ALJ modified his initial decision to reflect that Claimant was temporarily totally disabled from February 9, 1997, to March 19, 1997, and is entitled to TTD benefits for that period. Remand Order at 3.

Given the issues were fully discussed and resolved in the Board's prior decision, and there has been no change in the underlying circumstances or intervening law in the case, the Board's prior decision constitutes the law of the case. *Kirkpatrick v. B.B.I., Inc.*, 39 BRBS 69, 71 (2005); *Wayland v. Moore Dry Dock*, 25 BRBS 53, 58 (1991). We find no error in the ALJ's order on remand, as it is in accord with the Board's initial decision and remand instructions.

Accordingly, we affirm the ALJ's Order on Remand.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge