



BRB Nos. 16-0128
and 16-0128A

KELLY ZARADNIK)	
)	
Claimant-Respondent)	
Cross-Petitioner)	
)	
v.)	
)	
THE DUTRA GROUP, INCORPORATED)	
)	DATE ISSUED: 07/27/2021
and)	
)	
SEABRIGHT INSURANCE COMPANY)	
)	
Employer/Carrier-)	
Petitioners)	
Cross-Respondents)	ORDER

On June 1, 2021, Employer filed a motion requesting the Benefits Review Board declare its decision in *Zaradnik v. The Dutra Group, Inc.*, BRB Nos. 16-0128/A (Dec. 9, 2016) (Boggs, J., concurring and dissenting), *aff'd on recon.* (Sept. 22, 2017) to be “final,” thereby enabling it to appeal that decision to the United States Court of Appeals for the Ninth Circuit. Claimant has not responded. We deny Employer’s motion.

After the administrative law judge issued a decision awarding Claimant benefits in 2015, both parties appealed to the Board. The Board, *inter alia*, affirmed the administrative law judge’s findings that Claimant’s orthopedic and respiratory injuries are work-related but remanded the case for him to reconsider the nature of Claimant’s disability. The Board denied Employer’s subsequent motion for reconsideration en banc. Employer appealed to the Ninth Circuit, and Claimant filed a motion to dismiss the appeal because the Board’s decision was not final. The court granted Claimant’s motion to dismiss for lack of jurisdiction. *The Dutra Group, Inc. v. Zaradnik*, No. 17-73093 (9th Cir. May 22, 2018).

While the case was on remand to the administrative law judge, the parties stipulated Claimant is permanently totally disabled and her condition reached maximum medical improvement on January 28, 2012. With input from the Director, Office of Workers’ Compensation, the stipulations also included Employer’s entitlement to Section 8(f), 33 U.S.C. §908(f), relief from the Special Fund, commencing 104 weeks after January 28,

2012. The administrative law judge canceled the scheduled hearing and approved the parties' stipulations. Emp. Motion at Exh. B (Order dated March 12, 2021). The district director filed the administrative law judge's Order Approving Stipulations on March 17, 2021. No party appealed this Order.

With the issues on remand resolved, Employer asserts the stipulations also included an agreement that it would proceed with its appeal of the causation issue, which the Board had affirmed, to the Ninth Circuit. Emp. Motion at Exh. A.¹ To do so, it asks the Board to issue an order declaring its prior decision "final."

Contrary to Employer's assertion, an agreement between the parties does not give the Board authority or discretion to bypass statutory rules of procedure. *See Hamer v. Neighborhood Housing Svcs. of Chicago*, __ U.S. __, 138 S.Ct. 13 (2017). The Board obtains jurisdiction over a case upon receipt of a timely notice of appeal. The timeliness of a notice of appeal is jurisdictional. 33 U.S.C. §921(a); *Jeffboat, Inc. v. Mann*, 875 F.2d 660, 22 BRBS 79(CRT) (7th Cir. 1989); *Ins. Co. of N. Am. v. Gee*, 702 F.2d 411, 15 BRBS 107(CRT) (2d Cir. 1983); 20 C.F.R. §802.205. The Board obtains jurisdiction if an aggrieved party files an appeal within 30 days of the date that the district director files the administrative law judge's decision or order. 33 U.S.C. §§919(e), 921(a); 20 C.F.R. §802.205(a). Failure to file a notice of appeal with the Board within the 30-day period "shall foreclose all rights to review by the Board with respect to the case or matter in question." 20 C.F.R. §802.205(c).

In this case, the administrative law judge's Order Approving Stipulations resolved all remaining issues on remand. It was filed in the district director's office on March 17, 2021. Therefore, Employer had until April 16, 2021, to file an appeal with the Board. 33 U.S.C. §921(a); 20 C.F.R. §802.205(a). Employer did not file a timely notice of appeal, or any document that could be perceived as a timely notice of appeal. Its motion to the Board is dated May 28, 2021. Consequently, the administrative law judge's order, and the non-final orders preceding it, became final as of April 16, 2021, and the Board cannot

¹ The stipulations state, "The parties acknowledge that the Respondent may now proceed on the causation issue to the 9th Circuit."

address matters determined therein.² 33 U.S.C. §921(a); 20 C.F.R. §802.205(c). Because the Board now lacks jurisdiction to address the administrative law judge's order, and by extension the prior non-final orders, we cannot issue a decision or order declaring the prior decision "final."

Accordingly, we deny Employer's motion.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

² Employer should have filed a timely appeal of the administrative law judge's Order Approving Stipulations seeking summary affirmance of this decision and noting the appeal was for the purpose of preserving its right to appeal the underlying Board decision. *See, e.g., Morganti v. Lockheed Martin Corp.*, BRB No. 04-0407 (Feb. 17, 2004) (unpub.) (affirming underlying decision based on law of the case doctrine and granting motion for summary affirmance of decision after remand, so that further appeal could be taken).