

U.S. Department of Labor

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



BRB No. 20-0204  
OWCP No. 05-302694

LEON SYKES	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
VIRGINIA INTERNATIONAL	)	
TERMINALS, LLC	)	
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY	)	DATE ISSUED: 06/25/2020
ASSOCIATION, LIMITED	)	
	)	
Employer/Carrier-	)	
Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	ORDER

Employers appeals the February 12, 2020 Order Compelling Authorization and Furnishing of Medical Treatment (OWCP No. 05-302694) of District Director Theresa A. Magyar rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §901 *et seq.* (the Act). Employer has filed its Petition for Review and brief, contending the District Director erred in ordering employer "to authorize and pay for all physical therapy with Wardell Orthopaedics under the direction of Dr. Arthur Wardell." Employer contends the selection of Dr. Wardell's physical therapy practice is inappropriate because it controverts the claim that physical therapy is necessary

for claimant's work injury and, moreover, employer is entitled to select claimant's physical therapist.

We must dismiss employer's appeal for two reasons. First, its appeal was prematurely filed on March 3, 2020, while its February 19, 2020 motion for reconsideration remained pending with the district director.<sup>1</sup> Under 20 C.F.R. §802.206(f), an appeal filed while a timely motion for reconsideration is pending must be dismissed. *Aetna Casualty & Surety Co. v. Director, OWCP*, 97 F.3d 815, 30 BRBS 81(CRT) (5th Cir. 1996). In order to preserve its rights, a party must file a new appeal within 30 days of the issuance of an order disposing of the motion for reconsideration. 20 C.F.R. §§802.206(d), (e).

Second, employer's appeal raises questions of fact regarding the necessity of medical treatment, which must be addressed by an administrative law judge if the parties are not in agreement at the conclusion of the informal conference. *Weikert v. Universal Maritime Serv. Corp.*, 36 BRBS 38 (2002); *Sanders v. Marine Terminals Corp.*, 31 BRBS 19 (1997) (Brown, J., concurring); *see also Teer v. Huntington Ingalls, Inc., Pascagoula Oper.*, 53 BRBS 5 (2019); 20 C.F.R. §702.315. In such circumstances, the district director must refer the case to the Office of Administrative Law Judges at the request of any party. *Ingalls Shipbuilding, Inc. v. Asbestos Health Claimants*, 17 F.3d 130, 28 BRBS 12(CRT) (5th Cir. 1994).

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<sup>1</sup> On March 12, 2020, in response to employer's motion for reconsideration, the District Director sent a letter to the employer stating, "Reference is made to the captioned case, the Order filed February 12, 2020 and your [reconsideration] letter of February 19, 2020. The Order is specific to CHOICE of physical therapy. Any factual issue regarding the NEED for such is a new issue." Subsequently, an informal conference was held on the issue of the need for physical therapy; employer took the position that it was unnecessary. The claims examiner recommended employer pay for the therapy.

Accordingly, we dismiss employer's appeal with prejudice.

SO ORDERED.

GREG J. BUZZARD  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge