U.S. Department of Labor

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

BRB No. 24-0304

TOM L. MAYS Claimant-Petitioner v. HUNTINGTON INGALLS, INCORPORATED (AVONDALE OPERATIONS), f/k/a/ NORTHROP GRUMMAN SHIPBUILDING, INCORPORATED Self-Insured Employer-Respondent	)	**NOT-PUBLISHED** DATE ISSUED: 06/09/2026 DECISION and ORDER

Appeal of the Decision and Order of Angela F. Donaldson, Administrative Law Judge, United States Department of Labor.

Tom Mays, Mer Rouge, Louisiana.

Frank J. Torres (Blue Williams, L.L.P), Metairie, Louisiana, for Self-Insured Employer.

Before: ROLFE, JONES, and ULMER, Administrative Appeals Judges.

PER CURIAM:

Claimant, without representation,[1] appeals Administrative Law Judge (ALJ) Angela F. Donaldson's Decision and Order (2021-LHC-00810) rendered on a claim filed pursuant

[1] Claimant was represented by counsel throughout the proceedings before the Office of Administrative Law Judges (OALJ). His attorneys, Isaac H. Soileau, Jr. and Ryan A. Jurkovic of Soileau & Associates, LLC, filed a notice of appeal to the Benefits Review

to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901-950 (Act). 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.[2] 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

This case has an extraordinarily complex procedural history spanning more than three decades, involving multiple ALJ decisions, multiple Board decisions, an appeal to the United States Court of Appeals for the Fifth Circuit, and parallel Louisiana state court litigation. We will summarize only the relevant facts and procedural history.

While working as a welder for Employer on March 18, 1991, Claimant was kicked in the face by an employee of one of Employer's subcontractors. As a result of the attack, Claimant sustained a fracture of his right cheek, an eye injury, and a psychological condition. Employer voluntarily paid Claimant $5,514.68 in temporary total disability (TTD) benefits and medical benefits from March 18 through August 6, 1991, at which time Employer terminated all benefits based on its belief that Claimant could return to work per his medical providers' recommendations. Claimant did not return to work and sought additional benefits under the Act. In 1998, ALJ James W. Kerr denied Claimant's claim for additional benefits. JX 7. The Board affirmed ALJ Kerr's denial of disability compensation but remanded the case for reconsideration of the reasonableness and necessity of the medical treatment Claimant obtained after Employer controverted his claim. JX 8.[3] On remand, ALJ Kerr awarded reasonable and necessary medical treatment, JX 9, which the Board affirmed, JX 23.[4]

Board on May 11, 2024; however, on July 7, 2024, they moved to withdraw their representation. The Board granted their motion on August 1, 2024.

[2] This case arises within the jurisdiction of the United States Court of Appeals for the Fifth Circuit because Claimant sustained the injury at issue in this case in Louisiana. 33 U.S.C. §921(c); *see Roberts v. Custom Ship Interiors*, 35 BRBS 65, 67 n.2 (2001), *aff'd*, 300 F.3d 510 (4th Cir. 2002), *cert. denied*, 537 U.S. 1188 (2003); 20 C.F.R. §702.201(a).

[3] The prior decisions are included in the Joint Exhibits; we will refer to them using their respective JX numbers.

[4] The ALJ's decision was deemed affirmed by application of Pub. L. No. 106-554, 114 Stat. 2763. However, the Board reviewed the contentions and held the decision should be affirmed on its merits as well.

Meanwhile, Claimant filed suit in Louisiana state court against his attacker and his attacker's employer. In 2000, Claimant settled his third-party lawsuit for $60,000 without obtaining Employer's prior, written approval.[5] JX 20.[6]

Following the third-party settlement, Employer sought to terminate Claimant's entitlement to medical benefits under the Act pursuant to Section 33(g)(1), 33 U.S.C. §933(g)(1). At the same time, Claimant requested modification of his compensation award under Section 22 of the Act, 33 U.S.C. §922, alleging both a change in conditions and a mistake in fact.

In November 2002, ALJ Clement J. Kennington issued an order denying Claimant's request for modification as untimely. He also denied Employer's request for forfeiture, finding Section 33(g)(1) did not apply because the gross amount of the third-party settlement ($60,000) exceeded the amount of compensation to which Claimant was entitled under the Act ($5,514.68). ALJ Kennington instead found Section 33(f) of the Act, 33 U.S.C. §933(f), applied, thus entitling Employer to credit its liability for medical treatment and expenses against Claimant's net recovery from the third-party settlement. JX 26. The Board affirmed ALJ Kennington's conclusion regarding the application of Section 33(f) but reversed his dismissal of Claimant's petition for modification as untimely and remanded for ALJ Kennington to consider whether Claimant was entitled to additional disability compensation, and if so, whether his claim would be subject to forfeiture under Section 33(g). JX 27.

After the Board remanded the case to the Office of Administrative Law Judges (OALJ), Claimant withdrew his petition for modification. JX 29. While his claim was pending before the Office of Workers' Compensation Programs (OWCP), he sought a declaration of default, contending his medical expenses exceeded the amount of Employer's Section 33(f) credit. District Director (DD) Bradley Soshea reviewed the medical expenses submitted, calculated the total amount of medical expenses owed ($31,883.92), and determined Employer's remaining Section 33(f) credit from the gross

[5] The state court ordered the settlement proceeds to be placed in the registry of the court. From this amount, the court awarded $24,000 for attorney fees and $7,669.34 for costs and expenses, totaling $31,669.34. The remaining balance of $28,330.66 was presumably paid to Claimant. JX 50 at 117-120.

[6] Claimant initially disputed the validity of this settlement because he had refused to sign the agreement, alleging fraud. The state court granted the motion to enforce and held that an agreement had been reached and was valid. JXs 20, 22, 24, 50. The Board held the settlement was valid pursuant to the doctrine of collateral estoppel. JX 27.

settlement amount was $28,116.08.[7] He therefore found Employer had no liability for medical expenses at that time and issued an order on November 12, 2008, denying Claimant's request for a declaration of default. JXs 31-32.

Claimant appealed DD Soshea's order directly to the Board,[8] and the Board vacated his findings regarding Employer's Section 33(f) credit and remanded the case for him to redetermine the amount of Employer's credit based on Claimant's net proceeds as opposed to the gross proceeds from the third-party settlement. JX 40.[9]

On remand from the Board and the OALJ, DD David Widener held an informal conference on April 21, 2015, regarding Claimant's request for modification under Section 22, entitlement to medical benefits and additional disability benefits, average weekly wage, and Employer's Section 33(f) credit. In pertinent part, DD Widener determined Employer was entitled to a credit of $28,330.66 from the third-party settlement proceeds and recommended Employer review the medical reimbursement requests, provide an accounting of the amount of benefits due to Claimant considering the Section 33(f) credit, and authorize medical treatment with Claimant's chosen physicians. JX 43. Following an evidentiary hearing, ALJ Kennington issued a decision and order finding Claimant's work injuries rendered him totally disabled since the day he was assaulted, JX 45, and he would be entitled to $335,012.08 in additional disability compensation. JX 46. But because ALJ Kennington determined the record "clearly supports the conclusion that Claimant entered into a settlement with a third party" without Employer's written approval, which would bar Claimant's benefits, he denied Claimant's request for modification "as lacking in merit." JX 45 at 12.

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[7] $60,000 (total settlement amount) - $31,883.92 (total amount of reimbursable medical expenses) = $28,116.08 (Employer's remaining Section 33(f) credit).

[8] While Claimant's initial appeal of DD Soshea's order was pending before the Board, Claimant filed a motion for Section 22 modification with the OALJ. Given the pending modification proceedings, the Board dismissed Claimant's appeal but allowed Claimant to request reinstatement of his appeal at the conclusion of the Section 22 proceedings. JX 36.

[9] The Board vacated ALJ Kennington's dismissal of Claimant's petition for Section 22 modification as untimely and remanded that portion of the claim to the OALJ. JX 40. However, because some aspects of the claim were pending before the OALJ and others were pending before the OWCP, the ALJ granted Claimant's request to remand his claim to the OWCP so that all parts of the claim could be consolidated. JX 42.

On July 28, 2017, the Board affirmed ALJ Kennington's denial of Claimant's request for modification and held ALJ Kerr's prior award for medical benefits, JX 9, and ALJ Kennington's decision granting an offset to Employer under Section 33(f), JX 26, remained in effect. JX 47 at 10.[10] In a published decision, the Fifth Circuit affirmed the Board's decision, including its holding that the prior award for medical benefits remained in effect. *Mays v. Director, OWCP*, 938 F.3d 637 (5th Cir. 2019).

Claimant subsequently sought a recommendation from OWCP regarding his entitlement to additional disability compensation and Section 7 medical benefits, 33 U.S.C. §907, from the date of his injury "through the date of termination." JX 94. Once the claim was referred to the OALJ for a formal hearing and assigned to ALJ Donaldson (the ALJ), the parties sought a decision based on the written record.

In her decision and order (D&O), the ALJ construed Claimant's request for modification of prior applications of Sections 33(f) and 33(g) to be "focused solely on the OALJ's legal interpretation and application of [those] provisions." D&O at 11. She therefore declined to modify any prior decisions based on questions of legal interpretation or to correct purported errors of law. *Id.* Nonetheless, she considered Claimant's argument that only future benefits are forfeited under Section 33(g) but rejected it as inconsistent with the Board's holding in *Wyknenko v. Todd Pacific Shipyards Corp.*, 32 BRBS 16 (1998). Based on the Board's and the Fifth Circuit's previous decisions in the claim, the ALJ found the award of medical benefits and offset to Employer under Section 33(f) remained in effect. Therefore, the ALJ rejected Employer's argument that Claimant forfeited his entitlement to all benefits under the Act. D&O at 14. As for Claimant's medical treatment with his chosen providers, the ALJ reaffirmed the prior orders finding Claimant's treatment with Dr. Patterson, Dr. Hubli, Dr. Ware, and Dr. Stephens reasonable and necessary, and reiterated that Employer is liable for all reasonable and necessary past and future medical treatment. Finally, she determined the district director was best suited to address Claimant's request for reimbursement of his medical expenses and the applicable Section 33(f) offset. In sum, the ALJ denied Claimant's request for Section 22 modification and left the medical expenses reimbursement calculations with the district director. *Id.* at 17.

In the appeal currently before us, Claimant generally challenges the termination of his disability and medical benefits.[11] Employer responds, urging affirmance of the ALJ's

[10] The Board denied Claimant's and Employer's motions for reconsideration of the decision. *Mays v. Huntington Ingalls Inc.*, BRB No. 16-0645 (Nov. 3, 2017) (Order on Recons.).

[11] Across Claimant's pleadings, he contends the Board's 1999 decision established Employer had no valid basis to terminate benefits; therefore, the later proceedings invoking Section 33 were based on false facts and altered records. He contends the 1991 assault left

denial of Claimant's request for Section 22 modification.[12]

Section 22 and Disability

Section 22 of the Act allows for the modification of a final compensation order if there has been a change in conditions or a mistake in the determination of fact. 33 U.S.C. §922; *Metro. Stevedore Co. v. Rambo* [*Rambo I*], 515 U.S. 292, 293 (1995). Although Section 22 allows an ALJ to re-evaluate a final order when mixed questions of law and fact are raised, modification may not be used to assert a new legal interpretation or to correct errors of law. *Moore v. Va. Int'l Terminals*, 35 BRBS 28, 31 (2001); *accord Verderane v. Jacksonville Shipyards, Inc.*, 772 F.2d 775, 780 (11th Cir. 1985); *Gen. Dynamics Corp. v. Director, OWCP* [*Woodberry*], 673 F.2d 23, 26 (1st Cir. 1982); *cf. O'Keefe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 256 (1971) (comparing review under Section 21: "legal validity of the award," with review under Section 22: "factual errors in an effort 'to render justice under the [A]ct'").

We affirm the ALJ's denial of Claimant's request for modification insofar as Claimant sought additional disability compensation. As the ALJ observed, Claimant's present request for additional disability benefits was advanced through multiple theories, including reliance on the 2016 disability finding, issue preclusion, and renewed arguments concerning the effect of Sections 33(f) and 33(g). The ALJ permissibly found that, to the extent Claimant sought additional disability benefits based on a new legal interpretation of Sections 33(f) and 33(g), including his arguments that any forfeiture should apply only prospectively, that entitlement should be valued only at the time of settlement, and that a pre-settlement period of disability compensation remained payable, he was raising legal challenges to prior Section 33 rulings rather than identifying an independently discernible mistake in fact. D&O at 11-15. She rationally concluded Section 22 does not authorize modification on those grounds. 33 U.S.C. §922; *Moore*, 35 BRBS at 31; *Verderane*, 772 F.2d at 780; *Woodberry*, 673 F.2d at 26; *O'Keefe*, 404 U.S. at 256.

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him permanently disabled and the proceedings since 1991 were "bogus." In addition, he broadly alleges his case has been tainted by misconduct, fraud, perjury, collusion, racism, discrimination, and bias by Employer, the United States Department of Labor, judges, and attorneys. He also claims he was wrongfully terminated from his job with Employer and asks the Board, the Secretary of Labor, and other officials to investigate his claim and restore his benefits with interest.

[12] On October 28, 2025, Employer filed a motion to strike Claimant's post-December 2024 letters as untimely and irrelevant to the issues pending before the Board. We grant in part and reject in part Employer's motion and will consider Claimant's filings to the extent they are within the scope of the ALJ's decision and necessary for our review. 20 C.F.R. §§802.211(e), 802.220, 802.301, 802.404.

Moreover, substantial evidence supports the ALJ's alternative finding that Claimant did not establish a mistake in fact or change in condition warranting modification of the 1998 denial of additional disability compensation. After the Board in 2003 affirmed application of Section 33(f) and remanded Claimant's modification request, JX 27, and after the Board in 2005 stated the prior denial of disability benefits and application of Section 33(f) remained in effect unless modified pursuant to Section 22, JX 28, Claimant filed another modification request in 2015-2016 seeking, among other things, additional disability compensation based on disability and medical evidence. In the 2016 modification proceedings, ALJ Kennington accepted Claimant's disability and medical evidence and found Claimant totally disabled from March 11, 1991, and continuing, but he denied modification because any upward award for disability compensation would far exceed Claimant's $60,000 third-party settlement and would be subject to forfeiture under Section 33(g). JXs 45-46. The Fifth Circuit affirmed that reasoning, explaining ALJ Kennington did not modify Claimant's benefits and then apply Section 33(g), but instead denied modification because any upward modification would trigger and be cancelled out by Section 33(g), leaving the prior Section 33(f) offset in effect and the unmodified compensation award standing. JX 49.

In the present proceeding, the ALJ rationally found Claimant's current effort to obtain disability compensation dating back to 1991 had already been addressed in the 2016 modification proceedings and ensuing appeals. She further found Claimant expressly relied on the same medical evidence submitted in support of his 2016 modification request, and Claimant himself stated below that "[t]he medical evidence submitted to the OALJ for the July 2016 ruling is the same medical evidence submitted in support of this memorandum." Cl. Trial Br. at 13. In these circumstances, the ALJ acted well within her discretion in finding Claimant did not establish a new mistake in fact, change in condition, or other basis for modifying the 1998 denial of additional disability or the 2016 denial of modification. *Old Ben Coal Co. v. Director, OWCP* [*Hilliard*], 292 F.3d 533, 547 (7th Cir. 2002); *Kinlaw v. Stevens Shipping & Terminal Co.*, 33 BRBS 68, 72-73 (1999), *aff'd mem.*, 238 F.3d 414 (4th Cir. 2000).

Nor did the ALJ err in rejecting Claimant's reliance on the 2016 disability finding itself as a basis for a present award for disability compensation. As she explained, the 2016 finding that Claimant had been disabled since 1991 did not result in any modified compensation award; rather, it served as part of ALJ Kennington's rationale for denying modification because any additional disability compensation award would be subject to forfeiture under Section 33(g). D&O at 14. Thus, the ALJ permissibly concluded Claimant could not transform that 2016 factual finding into a presently payable compensation award in this proceeding.

Because the ALJ's denial of Claimant's request for modification and claim for additional disability compensation is rational, supported by substantial evidence, and in

accordance with law, we affirm it. *Hilliard*, 292 F.3d at 547; *Kinlaw*, 33 BRBS at 72-73; *Manente v. Sea-Land Serv., Inc.*, 39 BRBS 1, 4 (2004).

Medical Reimbursement and Section 33(f) Credit

We also affirm the ALJ's conclusion that the prior medical awards and Employer's Section 33(f) offset remain in effect.[13] We vacate, however, her refusal to adjudicate Claimant's medical reimbursement claim on the grounds that the matter was purely "ministerial" and the record did not establish Claimant's net recovery from the third-party settlement. D&O at 15-17. On the contrary, the record contains evidence relevant to Claimant's net recovery, his claimed medical expenses, and prior calculations of Employer's Section 33(f) credit. *See* JXs 32, 43, 50 at 119, 51-53. Our review of the record reveals evidence relevant to the state-court disbursement orders governing release of the settlement funds from the registry of the court reflect that attorneys and intervenors received $31,669.34 from the $60,000 settlement proceeds, leaving Claimant with net proceeds of $28,330.66. JX 50 at 119. Consistent with those disbursement records, DD Widener determined in April 2015 that Employer's Section 33(f) credit was $28,330.66. JX 43 at 2. The record also contains evidence relevant to whether that credit has been exhausted. In April 2015, Claimant sought the same reimbursement amounts he sought in the present proceeding: $33,906.33 in medical mileage, $1,494 in parking, and $1,829.92 in copayments. In addition, the record contains Claimant's medical treatment chronology

[13] Specifically, in 1999, ALJ Kerr found medical treatment Claimant received at Louisiana State University (LSU) Medical Center and from Drs. Patterson, Hubli, Ware, Stephens, Baker, and Roniger was reasonable, necessary, and related to his work injuries. He found Employer liable for medical expenses incurred by Claimant, as well as future medical treatment. JXs 9, 12; *see also* JX 23 (Board affirming award for Section 7 benefits). On November 5, 2002, ALJ Kennington denied Employer relief under Section 33(g) but granted it a Section 33(f) credit for any amount owed to Claimant under the Act. JX 26; *see also* JX 27 (Board affirming ALJ's denial of Section 33(g) and application of Section 33(f)); JX 28 (Board reiterating ALJ Kerr's denial of additional disability compensation, ALJ's Kerr's award for Section 7 benefits, and ALJ Kennington's denial of Section 33(g) and application of Section 33(f) remained in effect)).

As the ALJ correctly observed, the prior decisions awarded Claimant medical benefits and, following Claimant's third-party settlement, awarded Employer an offset under Section 33(f) against past and future benefits, including medical benefits. The Board and the Fifth Circuit later stated the prior award of medical benefits and the Section 33(f) offset to Employer in the net amount of Claimant's third-party settlement remain in effect. Thus, the ALJ rationally rejected Claimant's attempt to modify prior orders to the extent that Claimant sought to avoid application of Section 33(f) by reasserting a "non-forfeiture period" or different legal constructions of Sections 33(f) and 33(g).

covering 1991 through 2014, JX 52, a medical mileage summary, JX 53, and a summary of Employer's medical payments totaling $31,388.36 for treatment rendered between 1991 and September 2000. JX 51 at 2. Further, in 2008, DD Soshea reviewed the submitted medical expenses, calculated total medical expenses through November 2008 in the amount of $31,883.92, and determined Employer's remaining credit was $28,116.08. JX 32 at 1-3. Although the Board later vacated that order because DD Soshea calculated Employer's Section 33(f) credit using the gross settlement amount rather than Claimant's net recovery, and the order cannot stand as the final credit determination, DD Soshea's expense calculations remain record evidence relevant to Employer's liability for Claimant's past medical expenses.

The district director is responsible for supervising a claimant's medical care and treatment. 33 U.S.C. 907(b). This includes discretionary matters concerning the necessity, character, and sufficiency of treatment and changes of physician. 20 C.F.R. §§702.401(a), 702.407; *Teer v. Huntington Ingalls, Inc.*, 53 BRBS 5, 8 (2019); *Jackson v. Univ. Mar. Serv. Corp.*, 31 BRBS 103, 107 (1997). However, an ALJ may decide disputed factual issues concerning already-incurred medical expenses and the legal framework governing an employer's liability. *Lazarus v. Chevron U.S.A., Inc.*, 958 F.2d 1297, 1303-1304 (5th Cir. 1992) (ALJ must prescribe the amount of an award for medical expenses or establish means of deriving the amount); *C.H. v. Chevron U.S.A., Inc.* [*Heavin*], 43 BRBS 9, (2009); *Sanders v. Marine Terminals Corp.*, 31 BRBS 19, 22-23 (1997); *Anderson v. Todd Shipyards Corp.*, 22 BRBS 20, 24 (1989) (ALJ has authority to decide factual disputes regarding medical expenses already incurred); *McCurley v. Kiewest Co.*, 22 BRBS 115, 120 (1989) (ALJ has authority to order reimbursement for already incurred medical expenses and future medical treatment generally but no authority to order payment of future medical care at specific medical facility).

On this record, substantial evidence does not support the ALJ's rationale for declining to adjudicate the reimbursement issue. As Claimant argued below, the same reimbursement amounts were sought in the present proceeding, and the record indicated prior administrative calculations bearing directly on both the amount of Claimant's claimed medical expenses and the amount of Employer's 33(f) credit. The ALJ acknowledged Claimant sought reimbursement for medical travel ($33,906.33), parking ($1,494), and co-pay or self-pay expenses ($1,829.92) and further acknowledged the prior calculations regarding medical expenses and Employer's remaining Section 33(f) credit. She also stated that, as far as she could tell, the prior remand to the DD to determine Claimant's net recovery and recalculate Employer's credit had not been accomplished. D&O at 16. But given Employer contested liability for already-incurred medical expenses, and the record contains relevant evidence, we cannot affirm this aspect of the ALJ's decision.

Consequently, we vacate the portion of the ALJ's decision declining to address the reimbursement of medical expenses. We remand the case for the ALJ to determine

Employer's liability for Claimant's medical expenses. Specifically, the ALJ shall determine: (1) Claimant's net recovery from the third-party settlement; (2) the amount of Employer's Section 33(f) credit; (3) the amount of Claimant's proven reimbursable medical expenses, including claimed travel, parking, and co-pay or self-pay expenses to the extent supported by the record; (4) the manner in which Employer's Section 33(f) credit applies to those reimbursable expenses; and (5) if or when Employer's liability for medical benefits recommences. After making the necessary findings, the ALJ shall remand the case to the district director for the actual mathematical calculation of the remaining Section 33(f) credit, whether that credit has been depleted, and any resulting offset and interest, consistent with the ALJ's findings. *Lazarus*, 958 F.2d at 1303-1304; *Heavin*, 49 BRBS at 13.

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order and remand this case to the ALJ for consideration consistent with this opinion.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge