

LYNETTE CHARPENTIER)
(Widow of ZEBY CHARPENTIER, JR.))
)
Claimant-Respondent)

v.)

ORTCO CONTRACTORS,)
INCORPORATED)

DATE ISSUED: 09/23/2005

and)

LOUISIANA WORKERS')
COMPENSATION CORPORATION)

Employer/Carrier-)
Petitioners)

DECISION and ORDER

Appeal of the Decision and Order – Denying Benefits of Patrick M. Rosenow, Administrative Law Judge, United States Department of Labor.

William R. Mustian, III (Stanga & Mustian), Metairie, Louisiana, for claimant.

Travis R. LeBleu (Johnson, Stiltner & Rahman), Baton Rouge, Louisiana, for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (2004-LHC-1281) of Administrative Law Judge Patrick M. Rosenow rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers’ Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge if they are rational, supported by substantial evidence, and in accordance with law. *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

This is the third time that this case is before the Board. Claimant’s husband (the

decedent) went into cardiac arrest while working for employer as a painter on October 12, 1996; efforts to revive him failed. Thereafter, claimant sought death benefits and an award of funeral expenses under the Act. *See* 33 U.S.C. §909.

In the initial Decision and Order in this case, Administrative Law Judge Larry W. Price determined that claimant was not entitled to invocation of the Section 20(a) presumption, 33 U.S.C. §920(a), as she did not establish that the decedent was exposed to any strenuous activity or stressful situation at work which could have caused, aggravated or accelerated his condition. Judge Price further found that employer nevertheless established rebuttal of the Section 20(a) presumption, and that, based upon a consideration of the record as a whole, the decedent's death was not work-related. He consequently denied claimant benefits under the Act. Claimant thereafter appealed Judge Price's decision.

The Board held that the evidence of record is sufficient to establish the existence of working conditions which could have aggravated the decedent's underlying condition or contributed to or hastened his death. Accordingly, it reversed Judge Price's contrary finding and held that the Section 20(a) presumption was invoked. The Board next held that employer's evidence was insufficient as a matter of law to establish rebuttal of the Section 20(a) presumption. Accordingly, as a casual relationship between decedent's employment and his fatal heart attack was established, the Board vacated the denial of benefits, and remanded the case for Judge Price to consider the remaining issues. *See Charpentier v. Ortco Contractors, Inc.*, BRB No. 00-0812 (May 9, 2001)(unpub.).

In his Decision and Order on Remand, Judge Price awarded claimant and the decedent's children death benefits, funeral expenses, and interest. In its appeal, employer raised no issues with regard to Judge Price's decision on remand; rather, it challenged the Board's initial decision wherein the Board held that employer failed to rebut the invoked Section 20(a) presumption. The Board rejected employer's contentions on appeal pursuant to the law of the case doctrine and accordingly affirmed Judge Price's decision on remand awarding benefits. *See Charpentier v. Ortco Contractors, Inc.*, BRB No. 02-0115 (April 17, 2002)(unpub.).

Employer then sought review before the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit held that the Board used an improper evidentiary standard in its review of Judge Price's initial determination, and that substantial evidence supported his initial determination that decedent's cardiac arrest was not work-related. The court therefore vacated both opinions of the Board and instructed that the case be remanded to the Office of Administrative Law Judges for reinstatement of Judge Price's initial decision, which denied benefits to claimant. Employer ceased payment of benefits following this decision, *i.e.*, as of May 23, 2003. On August 29, 2003, Judge Price issued an order on remand reinstating the initial denial of benefits pursuant to the Fifth Circuit's decision. Claimant's Petition for Writ of Certiorari with the United States Supreme Court was denied on December 1, 2003. *Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir. 2003), *cert. denied*, 540 U.S. 1056 (2003).

Claimant then asserted that she was entitled to compensation for the period from May 24, 2003, to December 1, 2003, *i.e.*, the time between the issuance of the Fifth Circuit's decision and the Supreme Court's denial of certiorari. The case was then assigned to Administrative Law Judge Patrick M. Rosenow (the administrative law judge), who rejected claimant's assertion and therefore denied claimant's claim for benefits under the Act.

On appeal, claimant challenges the administrative law judge's interpretation of Section 21(c) of the Act, 33 U.S.C. §921(c), in denying benefits for the period between the date of the Fifth Circuit's decision and the date upon which the Supreme Court denied certiorari. Employer responds, urging affirmance.

Claimant contends that under the plain wording of Section 21(c), employer should have continued its payment of benefits until December 1, 2003, when the Supreme Court denied claimant's writ of certiorari. Claimant maintains that Section 21(c) mandates that employer continue with the payment of an award, unless a stay is specifically granted, pending a final decision on the claim. Employer argues, in response, that in order for Section 21(c) to be applicable, there must be an award requiring payment. Employer maintains that once the Fifth Circuit's decision was issued, there was no longer any award in existence requiring payment, as that decision was a final decision as defined by Section 21(c) of the Act.

Interpreting Section 21(c), the administrative law judge initially determined that "the question as to whether payments are due at any specific point in time hinges on what, if any, ALJ order is in effect at that time." Decision and Order at 4. Applying this question to the case at hand, he found that as of the date of the Fifth Circuit's opinion reinstating Judge Price's original denial of benefits, there was no order that would direct the "payment of the amounts required by an award," within the meaning of Section 21(c). Consequently, the administrative law judge concluded that it is consistent with the intent of the statute and fundamental due process requirements that claimant's claim for additional benefits for the period between May 24, 2003, to December 1, 2003, be denied.

As all parties acknowledge, the arguments raised in this appeal present a novel issue and involve the statutory interpretation of the pertinent provisions of the Act. It is axiomatic under the rules of statutory construction that, when interpreting a statute, the starting point is the plain meaning of the words of the statute. *Mallard v. U.S. Dist. Ct. for the Southern Dist. of Iowa*, 490 U.S. 296 (1989); *United States v. Flowers*, 227 F.Supp. 1014 (W.D. Tenn. 1963), *aff'd*, 331 F.2d 604 (6th Cir. 1964). Section 21(c) of the Act states:

(c) Court of appeals; jurisdiction; persons entitled to review; petition; record; determination and enforcement; service of process; stay of payments.

Any person adversely affected or aggrieved by a final order of the Board

may obtain a review of that order in the United States court of appeals for the circuit in which the injury occurred, by filing in such court within sixty days following the issuance of such Board order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court, to the Board, and to the other parties, and thereupon the Board shall file in the court the record in the proceedings as provided in section 2112 of title 28. Upon such filing, the court shall have jurisdiction of the proceeding and shall have the power to give a decree affirming, modifying, or setting aside, in whole or in part, the order of the Board and enforcing same to the extent that such order is affirmed or modified. The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the court. No stay shall be issued unless irreparable injury would otherwise ensue to the employer or carrier. The order of the court allowing any stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that irreparable damage would result to the employer, and specifying the nature of the damage.

33 U.S.C. §921(c). The language of Section 21(c), pertinent to claimant's contentions on appeal, is that the court has the authority to "set aside" a Board order and that "[t]he payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the court. No stay shall be issued unless irreparable injury would otherwise ensue to the employer or carrier." Interpretation of this portion of Section 21(c), via its plain meaning, reveals that employer is obligated to continue "the payment of amounts required by an award" throughout the adjudicative process until the issuance of a final decision. As of the date of issuance of the Fifth Circuit's decision "setting aside" the Board's order, as suggested by employer and determined by the administrative law judge, there was no longer any amount "required by an award" since that decision effectively terminated the prior award of benefits. Contrary to claimant's assertion, it therefore became unnecessary at that point for employer to file a stay of payment since, by virtue of the Fifth Circuit's decision, there was no longer "an award" requiring the payment of benefits.

The administrative law judge's decision is further supported by application of the mandate rule. A corollary of the law of case doctrine, this rule provides that a lower court on remand must "implement both the letter and the spirit of the [appellate court's] mandate," and may not disregard the "explicit directives" of that court. *See United States v. Lee*, 358 F.3d 315, 321 (5th Cir. 2004) (quoting *United States v. Matthews*, 312 F.3d 652, 657 (5th Cir. 2002)); *see also Vendo Co. v. Lektro-Vend Corp.*, 434 U.S. 425, 427-428 (1978). The Fifth Circuit's decision herein explicitly directed that the case be "remanded to the ALJ for reinstatement of [Judge Price's] initial holding, which denied benefits to Charpentier." *Charpentier*, 332 F.3d at 292-93, 37 BRBS at 39(CRT). To

require, as claimant suggests, employer to continue to pay benefits while the writ of certiorari was pending before the United States Supreme Court would be in conflict with the Fifth Circuit's plain and unambiguous mandate conclusively establishing that claimant is not entitled to benefits.

Furthermore, finality of federal court decisions is dictated by the Federal Rules of Appellate Procedure. Under Rule 41, which pertains to mandates issued by federal courts, an appellate court's mandate, which unless otherwise directed by the court consists of a certified copy of the judgment, is effective as of the date of issuance. Fed. Rule App. Proc. Rule 41. More specifically, under Rule 41(c), the judgment of the court of appeals becomes final upon issuance and fixes the parties' obligations as of that time. Fed. Rule App. Proc. Rule 41(c). The judgment's effectiveness is not delayed until receipt of the mandate by the trial court, in this case the Board or the administrative law judge, or until that tribunal acts upon it.

Consequently, the plain meaning of the phrase "required by an award" as articulated in Section 21(c) of the Act, as well as the application of Rule 41(c) of the Federal Rules of Appellate Procedure, dictate that we affirm the administrative law judge's finding that claimant is not entitled to benefits for the period between May 24, 2003, and December 1, 2003.¹

¹ As the plain meaning of the statute and Rule 41(c) support this outcome, we need not consider claimant's and/or employer's policy arguments.

Accordingly, the administrative law judge's Decision and Order – Denying Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge