

BERNICE SCHUCHARDT)
(Widow of LAWTON SCHUCHARDT))

Claimant-Respondent)

v.)

DILLINGHAM SHIP REPAIR)

and)

ZENITH INSURANCE COMPANY)

DATE ISSUED: 11/30/2005

Employer/Carrier-)
Petitioners)

NORTHWEST MARINE IRON WORKS)

and)

SAIF CORPORATION)

Employer/Carrier-)
Respondents)

ZIDELL MARINE CORPORATION)

Self-Insured)
Employer-Respondent)

EL DORADO INSURANCE)
COMPANY/OREGON INSURANCE)
GUARANTY ASSOCIATION)

Carrier-Respondent)

SAIF CORPORATION)

Carrier-Respondent)

)

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|----------------------------------|---|---------------------|
| WILLAMETTE IRON AND STEEL/GUY F. |) | |
| ATKINSON |) | |
| |) | |
| and |) | |
| |) | |
| WAUSAU INSURANCE COMPANY |) | |
| |) | |
| Employer/Carrier- |) | |
| Respondents |) | |
| |) | |
| DIRECTOR, OFFICE OF WORKERS' |) | |
| COMPENSATION PROGRAMS, UNITED |) | |
| STATES DEPARTMENT OF LABOR |) | |
| |) | ORDER on MOTION for |
| Party-in-Interest |) | RECONSIDERATION |

Claimant has timely moved for reconsideration of the Board's Decision and Order in this case, *Schuchardt v. Dillingham Ship Repair*, 39 BRBS 64 (2005). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Dillingham Ship Repair (Dillingham) has filed a response to claimant's motion. We grant claimant's motion for reconsideration for the reasons set forth below.

In its Decision and Order, the Board held, as a matter of law, that claimant established that her husband's death was related to asbestos exposure during the course of his shipyard employment. Thus, the Board stated that claimant established her entitlement to death benefits under the Act. The Board also held that the administrative law judge's failure to address whether decedent was exposed to asbestos inside a Foster Wheeler boiler during the course of his employment with Dillingham and his inconclusive weighing of the evidence as a whole required that the Board vacate the administrative law judge's finding that Dillingham is the responsible employer. The Board remanded the case for the administrative law judge to reconsider the responsible employer issue consistent with the applicable law.

In her motion for reconsideration, claimant asserts that Dillingham should continue paying compensation for decedent's work-related death pending the issuance of the administrative law judge's decision. Dillingham responds that the Board vacated the administrative law judge's decision and that it is not liable for benefits pending a decision on remand that it is the responsible employer. Alternatively, Dillingham asserts that if it is ordered to continue paying benefits, it is entitled to reimbursement should another employer be found liable.

We grant claimant's motion for reconsideration. In its decision, the Board held, as a matter of law, that decedent's death was related to his employment.

Claimant has therefore established her entitlement to death benefits under the Act. 33 U.S.C. §909. The sole issue on remand is the determination of the employer responsible for claimant's death benefits. This is an issue of allocation of liability and not an issue of compensability. *See, e.g., Cooper/T. Smith Stevedoring Co., Inc. v. Liuzza*, 293 F.3d 741, 749, 36 BRBS 18, 24(CRT) (5th Cir. 2002); *Bath Iron Works Corp. v. Brown*, 194 F.3d 1, 6, 33 BRBS 162, 166(CRT) (1st Cir. 1999). Dillingham therefore remains liable to claimant pending a finding on remand that it is not the responsible employer. Should the administrative law judge find responsible an employer other than Dillingham, Dillingham is entitled to reimbursement from the liable employer for its prior payments to claimant. *See, e.g., Total Marine Services, Inc. v. Director, OWCP [Arabie]*, 87 F.3d 774, 30 BRBS 62(CRT) (5th Cir. 1996).

Accordingly, claimant's motion for reconsideration is granted. 20 C.F.R. §802.409. The Board's decision is modified to provide that Dillingham shall continue paying claimant death benefits while the case is pending before the administrative law judge. In all other respects, the Board's decision is affirmed. The case is remanded for further proceedings in accordance with the Board's September 29, 2005, Decision and Order.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge