

NEIL ABBOTT, JR.)	
)	
Claimant-Respondent)	
)	
v.)	
)	
UNIVERSAL IRON WORKS,)	
INCORPORATED)	
)	
and)	
)	
LOUISIANA INSURANCE GUARANTY)	
ASSOCIATION)	
)	
Employer/Carrier-)	DECISION and ORDER
Petitioners)	ON RECONSIDERATION

David B. Allen (Samanie, Barnes & Allen), Houma, Louisiana, for claimant.

Collins C. Rossi (Bailey & Leininger), Metairie, Louisiana, for employer/carrier.

Before: SMITH, DOLDER, and MCGRANERY, Administrative Appeals Judges.

PER CURIAM:

Louisiana Insurance Guaranty Association (LIGA) has timely moved for reconsideration of the Board's Decision and Order in this case. Abbott v. Universal Iron Works, Inc., 23 BRBS 196 (1990). LIGA has also requested an expedited hearing on its motion to stay payment of benefits pending the Board's determination of its motion for reconsideration.¹

In its Decision, the Board rejected LIGA's assertion that the administrative law judge's Decision and Order should be reversed and the case remanded for a new hearing because LIGA had not received adequate notice of the hearing. While agreeing that the administrative law judge had violated LIGA's procedural due process rights in advising the parties that he would not be considering LIGA's liability and then ruling on this issue in his Decision and Order, the Board concluded that any procedural error

¹LIGA correctly asserts that claimant's opposition brief filed on August 3, 1990 is untimely inasmuch as LIGA's motion for reconsideration was filed on April 19, 1990, and the Board therefore will not consider it. 20 C.F.R. §802.213(a).

which occurred was harmless and that a new hearing regarding the effect of the "cut-through" endorsement was unnecessary because LIGA's liability under the "cut-through" endorsement was conclusively established in Wilkerson v. Jimco, Inc., 499 So. 2d 1245 (La. App. 4th Cir. 1986). The Board further determined that although LIGA had also been denied the opportunity to contest claimant's entitlement to benefits, LIGA had waived its right to a hearing on the substantive entitlement issues because on appeal LIGA argued only that it was entitled to a new hearing regarding the effect of the "cut-through" endorsement and did not contest the administrative law judge's findings on the merits of the claim.

On reconsideration, LIGA argues that the Board erred in holding that LIGA had received adequate notice of the hearing because although the administrative law judge stated that LIGA had been served with process in adequate time to require its participation in the hearing, he did not consider whether LIGA had been served with timely notice of hearing pursuant to 20 C.F.R. §702.335. LIGA further avers that the Board erred in rejecting LIGA's assertion that it is entitled to a new hearing regarding the effect of the "cut-through" endorsement because as of the time of the formal hearing, the "cut-through" endorsement remained a viable defense. Finally, LIGA asserts that the Board erred in finding that LIGA had waived its right to a new hearing regarding the merits of the claim because it did not limit its procedural due process argument on appeal solely to its right to present evidence regarding the effect of "cut-through" endorsement.

LIGA's notice argument is rejected for the reasons set forth in our initial Decision. LIGA has failed to raise any new arguments not previously considered by the Board, and we therefore reaffirm our prior determination that LIGA received adequate notice of the hearing.

We also reaffirm our prior determination that LIGA is not entitled to a de novo hearing regarding the effect of the "cut-through" endorsement and reject employer's assertion that the Board erred in relying on Louisiana cases decided more than one year after the hearing which were not a part of the record before the administrative law judge. A court is to apply the law in effect at the time it renders its Decision and Order unless doing so would result in manifest injustice or there is statutory or legislative history to the contrary. See Bradley v. School Board of City of Richmond, 416 U.S. 696, 711 (1974). Because the Louisiana cases upon which the Board relied merely reaffirm Wilkerson, which had been issued prior to the administrative law judge's Decision, the Board's reliance on these cases did not result in manifest injustice. Moreover, although LIGA correctly asserts that the administrative law judge makes no reference to Wilkerson or the

"cut-through" endorsement, we need not remand for consideration of this matter because Wilkerson mandates a holding that LIGA is liable for claimant's benefits as a result of the "cut-through" endorsement as a matter of law.

We also do not agree with LIGA's assertion that it contested claimant's entitlement in its Petition for Review and Brief and that the Board erred in holding that LIGA waived its right to a hearing on the merits of the claim. However, as we recognized in our Decision and Order, the administrative law judge's actions at the hearing deprived LIGA of the opportunity to contest claimant's entitlement to benefits. As the right to be heard is fundamental to due process of law and because LIGA in its motion for reconsideration clearly asserts that the administrative law judge erred in not affording it the opportunity to advance arguments regarding claimant's entitlement, we hereby grant LIGA's motion for reconsideration on this sole argument. Accordingly, the case is remanded to the administrative law judge to allow LIGA the opportunity to participate in a new hearing limited solely to consideration of issues regarding claimant's entitlement to benefits under the Act.

Finally, LIGA has requested an expedited hearing on its motion to stay payment of compensation pending the Board's resolution of its motion for reconsideration. In view of our decision on reconsideration, issuance of a stay of payments is moot. Moreover, in view of the fact that LIGA has asserted no specific error in the administrative law judge's finding regarding claimant's entitlement, LIGA must continue to pay claimant temporary total disability compensation as awarded by the administrative law judge pending resolution of the case on the merits on remand.

Accordingly, employer's motion for reconsideration is denied with regard to its arguments concerning LIGA's receipt of notice and LIGA's liability pursuant to the "cut-through" endorsement. LIGA's motion for reconsideration is granted, and the case is

remanded for the administrative law judge to conduct a new hearing limited to claimant's entitlement to benefits under the Act. LIGA's motion to stay payment of compensation is denied, and the award of temporary total disability compensation remains in effect pending resolution of the case on remand.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge