

BRB No. 93-1100

LORRAIN B. HAMILTON, (Widow of)	
EVERETTE HAMILTON, SR.))	
)	
Claimant)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	DATE ISSUED:
INCORPORATED)	
)	
Self-Insured)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT)	
OF LABOR)	
)	
Petitioner)	DECISION and ORDER

Appeal of the Decision and Order on Motion for Reconsideration of G. Marvin Bober, Associate Chief Administrative Law Judge, United States Department of Labor.

Mark Reinhalter (J. Davitt McAteer, Acting Solicitor of Labor; Carol DeDeo, Associate Solicitor; Janet R. Dunlop, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director), appeals the Decision and Order on Motion for Reconsideration (91-LHC-994) of Associate Chief Administrative Law Judge G. Marvin Bober 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'Keefe v. Smith*,

Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

The sole issue raised by the Director's appeal is whether the administrative law judge erred in denying the Director's Motion for Reconsideration of the administrative law judge's Decision and Order as untimely filed. No party has responded to the Director's appeal.

Claimant's husband (decedent) filed a claim for compensation under the Act. On November 13, 1992, the administrative law judge issued a Decision and Order granting employer's motion to dismiss the claim pursuant to Section 33(g)(1) of the Act, 33 U.S.C. §933(g)(1), in accordance with the decision of the United States Supreme Court in *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 112 S.Ct. 2589, 26 BRBS 49 (CRT) (1992). The Certificate of Filing and Service attached to the administrative law judge's Decision and Order indicates that it was filed by the Office of the District Director¹ on November 24, 1992, and that copies of the administrative law judge's Decision and Order were mailed on that date to the parties and their representatives. On December 2, 1992, the Director submitted by mail a Motion for Reconsideration and to Reopen Record for Admission of Additional Evidence, requesting that the administrative law judge's Decision and Order be amended to reflect that a widow's claim had been filed in the instant case. In a Decision and Order on Motion for Reconsideration, the administrative law judge denied the Director's motion as untimely filed based upon a determination that his Decision and Order was "filed" as of the date it was received by the Office of the District Director. Specifically, the administrative law judge determined that inasmuch as his Decision and Order was "dated and served" by the Office of Administrative Law Judges on the Office of the District Director on November 13, 1992, in order to be timely the motion for reconsideration had to be filed no later than ten days from that date, November 23, 1992. Thus, the administrative law judge found the Director's motion, filed on December 2, 1992, to be untimely. *See* Decision and Order on Motion for Reconsideration at 4.

On appeal, the Director contends that his motion for reconsideration was timely filed with the administrative law judge since it was mailed within ten days of the date that the district director certified that the administrative law judge's Decision and Order was filed in the Office of the District Director. We agree. Section 21(a) of the Act, 33 U.S.C. §921(a), states that an administrative law judge's compensation order shall become effective when filed in the office of the district director, as provided in Section 19 of the Act, 33

¹We note that the title "district director" has been substituted for the title "deputy commissioner" used in the statute, 20 C.F.R. §702.105, and shall be used in this decision except when the statute is quoted.

U.S.C. §919. *See also* 20 C.F.R. §702.350. Section 19(e) of the Act states:

The order rejecting the claim or making the award. . . shall be filed in the office of the deputy commissioner, and a copy thereof shall be sent by registered mail or by certified mail to the claimant and to the employer at the last known address of each.

33 U.S.C. §919(e).

The regulation governing the filing of compensation orders under the Act states in pertinent part:

Upon receipt [of the administrative law judge's decision], the district director . . . shall formally date and file the . . . compensation order (original) in his office . . . and the district director shall, on the same day as the filing was accomplished, send by certified mail a copy of the compensation order to the parties and to representatives of the parties, if any. Appended to each such copy shall be a paragraph entitled "proof of service" containing the certification of the district director that the copies were mailed on the date stated, to each of the parties and their representatives....

20 C.F.R. §702.349.

The regulations governing the finality of compensation orders provide that an administrative law judge's Decision and Order is effective only when the district director formally dates and files the Decision and Order. *See* 20 C.F.R. §§702.349, 702.350. Implicit in circuit court and Board case law addressing the filing of compensation orders is the premise that the administrative law judge's Decision and Order is not effective at least until the affirmative act of dating and filing the Decision and Order is performed by the district director. *See Sea Land Service, Inc. v. Barry*, 41 F.3d 903, 29 BRBS 1 (CRT)(3d Cir. 1994); *Nealon v. California Stevedore & Ballast Co.*, 996 F.2d 966, 27 BRBS 31 (CRT)(9th Cir. 1993); *Jeffboat, Inc. v. Mann*, 875 F.2d 660, 22 BRBS 79 (CRT)(7th Cir. 1989); *Ins. Co. of N. America v. Gee*, 702 F.2d 411, 15 BRBS 107 (CRT)(2d Cir. 1983); *Beach v. Noble Drilling Corp.*, 29 BRBS 22 (1995)(Order on Reconsideration *En Banc*) (McGranery, J., concurring and Brown, J., dissenting). Cases arising under the Black Lung Benefits Act, 30 U.S.C. §901 *et seq.*, which incorporates Section 21(a) of the Act, similarly hold that decisions are effective when filed by the district director and not earlier. *See Daugherty v. Director, OWCP*, 897 F.2d 740, 13 BLR 2-393 (4th Cir. 1990); *Trent Coal, Inc. v. Day*, 739 F.2d 116, 6 BLR 2-77 (3d Cir. 1984).

The regulation governing the filing of a motion for reconsideration of an administrative law judge's compensation order in a longshore claim defines a timely motion for reconsideration as one filed within ten days of the date of the filing of the administrative law judge's Decision and Order in the office of the district director. 20 C.F.R. §802.206(b)(1). *See Bogdis v. Marine Terminals Corp.*, 23 BRBS 136, 138 (1989). Additionally, the regulation provides that a motion for reconsideration will be considered filed as of the date of mailing where the date of delivery would result in the motion's being untimely. 20 C.F.R. §802.206(c).

As noted by the Director on appeal, there is no record evidence in the instant case establishing the date on which the administrative law judge's Decision and Order was actually received by the Office of the District Director. Thus, the Director argues that the administrative law judge's ruling equating undocumented receipt with "filing" would require an independent inquiry as to the date the Decision and Order was, in fact, received by the Office of the District Director, making the date of filing a disputable fact in every case. We agree. Moreover, the administrative law judge's definition of "filing" as mere receipt of the Decision and Order by the district director is not supported by the language the administrative law judge cites from the decision of the United States Supreme Court in *United States v. Lombardo*, 241 U.S. 73, 36 S.Ct. 508 (1916); specifically, the Court's statement that "[a] paper is filed when it is delivered to the proper official and by him received and filed," 241 U.S. at 76, 36 S.Ct. at 509, suggests that mere receipt is not tantamount to filing. See *Trent Coal, Inc.*, 739 F.2d at 118, 6 BLR at 2-80. Moreover, the Court's holding in *Lombardo* was based on the reasoning that "anything short of delivery [in *Lombardo*, mere deposit in the mail] would leave the filing a disputable fact." *Lombardo*, 241 U.S. at 77, 36 S.Ct. at 509. Thus, utilization of the administrative law judge's definition of "filing" would be contrary to the concern expressed by the Court in *Lombardo* that the filing not be left a disputable fact. Once the district director files the decision and serves it on the parties, he must certify that he has done so, providing a definite date for his actions.

We therefore hold that the 10-day period for requesting reconsideration of an administrative law judge's decision commences on the date that the district director certifies that he filed the Decision and Order. In the case at bar, the district director certified that the administrative law judge's Decision and Order was filed on November 24, 1992. The Director's motion for reconsideration was subsequently mailed on December 2, 1992, eight days after the administrative law judge's Decision and Order was filed in the Office of the District Director. The Director's motion was thus timely, as it was filed within the ten day period allowed for the filing of a motion for reconsideration.

Accordingly, the Decision and Order on Motion for Reconsideration of the administrative law judge denying the motion as untimely is reversed, and the case is remanded to the administrative law judge for consideration of the merits of the Director's motion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge