

BRB No. 94-2498
Case No. 93-LHC-0352
OWCP No. 10-0031893

RICHARD AHL)
)
Claimant-Respondent)
)
v.)
)
MAXON MARINE, INCORPORATED) DATE ISSUED:
)
and)
)
CRAWFORD AND COMPANY)
)
Employer/Carrier-)
Petitioners)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS,)
UNITED STATES DEPARTMENT)
OF LABOR)
)
Respondent) ORDER

Employer has filed a Motion to Strike and Motion to Dismiss Director, OWCP, As Party in the captioned case, contending that, pursuant to the decision of the United States Supreme Court in *Director, OWCP v. Newport News Shipbuilding & Dry Dock Co., [Harcum]*, ___ U.S. ___, 63 U.S.L.W. 4213 (March 21, 1995), the Director has no standing to appear as an independent party in a claim for compensation under the Longshore and Harbor Workers' Compensation Act. Neither the Director nor claimant has filed a response in opposition to employer's motion.

The Board hereby denies employer's Motion to Strike and Motion to Dismiss Director, OWCP, As Party. In denying employer's motions, we initially note that, contrary to employer's assertion, the Supreme Court in *Harcum* did not hold that the Director lacks standing to appear as a party in a claim for compensation arising under the Act. Rather, the Supreme Court's decision in *Harcum* addressed the issue of whether the Director has standing, pursuant to Section 21(c) of the Act, 33 U.S.C. §921(c), to appeal a denial of benefits by the Board to the appropriate United States court of appeals. In this regard, the Court concluded that the Director was not "a person adversely affected or aggrieved" within the meaning of Section 21(c) and that, thus, the Director lacked standing to appeal a decision by the Board pursuant to that subsection of the Act. In the instant case,

however, employer is the appealing party, while the Director has filed a brief in response. Accordingly, as the Director is not the petitioner in the case before us, the Court's decision in *Harcum* is not supportive of employer's motions.

As this case involves the appeal of an administrative law judge's decision to the Board, Section 21(b)(3) of the Act, 33 U.S.C. §921(b)(3), is the applicable subsection to be interpreted regarding the right of a party to appeal a decision to the Board. Section 21(b)(3) states, *inter alia*, that "The Board shall be authorized to hear and determine appeals . . .taken by any party in interest. . ." *See* 33 U.S.C. §921(b)(3). Moreover, pursuant to the Board's implementing regulations, the Director has standing to appeal or respond to an appeal before the Board as a party-in-interest. *See* 20 C.F.R. §§802.201(a); 802.212. We therefore deny employer's request that the Director's brief be stricken and that Director be dismissed as a party to these proceedings.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge