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| MICHAEL PHILLIPS |) | |
| |) | |
| Claimant-Petitioner |) | |
| |) | |
| v. |) | |
| |) | |
| A-Z INTERNATIONAL |) | DATE ISSUED: |
| |) | |
| and |) | |
| |) | |
| GREAT AMERICAN INSURANCE |) | |
| COMPANY |) | |
| |) | |
| Employer/Carrier- |) | |
| Respondents |) | DECISION and ORDER |

Appeal of the Supplemental Decision Certifying Facts and Recommending Sanction and the Amended Supplemental Decision Certifying Facts and Recommending Sanction of Samuel J. Smith, Administrative Law Judge, United States Department of Labor.

Michael Phillips, Stonewall, Oklahoma, *pro se*.

James P. Aleccia, Long Beach, California, for employer/carrier.

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

PER CURIAM:

Claimant, without representation, appeals the Supplemental Decision Certifying Facts and Recommending Sanction and the Amended Supplemental Decision Certifying Facts and Recommending Sanction (91-LHC-2042) of Administrative Law Judge Samuel J. Smith 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 Longshore Act), as extended by the Outer Continental Shelf Lands Act, 43 U.S.C. §1331 *et seq.* (the "OCSLA"). We must affirm the findings of fact and conclusions of law of the administrative law judge which 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).

Claimant sought benefits under the OCSLA for an injury to his lower back and loss of use of

the left leg, which he alleged occurred on the *Hermosa*, an offshore oil rig. He alleged the injury occurred on January 7 or 8, 1987. In a Decision and Order Denying Benefits dated March 26, 1993, the administrative law judge found that no injury occurred on the offshore rig, and thus claimant did not meet the OCSLA's situs requirement. *See* 43 U.S.C. §1333. The administrative law judge further found that an injury occurred at a land-based shop on January 6, 1987, but that claimant's employment there did not constitute "maritime employment" under the Longshore Act. *See* 33 U.S.C. §902(3). Thus, based on a lack of coverage, benefits were denied. This decision was not appealed.¹ Employer submitted a post-decision brief, seeking repayment of compensation and medical benefits it had paid to claimant prior to the issuance of the administrative law judge's decision. Employer alleged that claimant's claim that an injury occurred on the offshore rig constitutes fraud.

In his Supplemental Decision Certifying Facts and Recommending Sanctions, the administrative law judge rejected employer's attempts to seek repayment from claimant under Sections 14(j) and 21(d) of the Act. 33 U.S.C. §§914(j), 921(d); *Stevedoring Services of America v. Eggert*, 953 F.2d 552, 25 BRBS 92 (CRT) (9th Cir.), *cert. denied*, 112 S.Ct. 3056 (1992). He also rejected employer's request that its attorney's fees and costs be paid by claimant pursuant to Section 26 of the Act, 33 U.S.C. §926. *Metropolitan Stevedore Co. v. Brickner*, 11 F.3d 887, 27 BRBS 132 (CRT) (9th Cir. 1993). He found, however, that Section 27(b) of the Act, 33 U.S.C. §927(b), provides the remedy employer seeks. The administrative law judge found that claimant's claim of benefits under the OCSLA was fraudulently made in an attempt to obtain the greater benefits available under that Act. He stated that if claimant had not made such a claim then employer would not have had to engage in administrative litigation. Therefore, the administrative law judge found that claimant's fraudulent claim constitutes fraud against the lawful administrative process and the administrative law judge recommended that claimant be sanctioned, pursuant to Section 27(b) of the Act, by having to reimburse employer \$54,180.19, representing the temporary total disability benefits paid to claimant.² In an amended supplemental decision, the administrative law judge also recommended that claimant be directed to repay employer all medical benefits provided by employer and to reimburse employer for its reasonable attorney's fees and costs associated with its defense of this claim.

As claimant appeals the administrative law judge's decision without representation, we will review the administrative law judge's decision in order to ascertain whether it is rational, supported by substantial evidence, and in accordance with law. *O'Keeffe*, 380 U.S. at 359. Employer responds, urging affirmance of the administrative law judge's decision.

¹Thus, the Board will not address any issues relating to the administrative law judge's findings in this decision.

²The administrative law judge noted in his amended decision that he was not empowered under Section 27(b) to order claimant to repay the benefits, but that this was his recommendation to the district court should the court find against claimant.

Section 27(a) grants the administrative law judge the authority, *inter alia*, to issue subpoenas, to administer oaths, to compel the attendance and testimony of witnesses or production of documents, and to do "all things conformable to law which may be necessary to enable him effectively to discharge the duties of his office." 33 U.S.C. §927(a). Section 27(b) provides that the administrative law judge shall certify facts to the district court when a person:

disobeys or resists any lawful order or process, or misbehaves during a hearing..., or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or having taken the oath refuses to be examined according to law....

33 U.S.C. §927(b). The district court shall then hear the evidence and, if warranted, punish the person "in the same manner and to the same extent as for a contempt committed before the court..." 33 U.S.C. §927(b). The administrative law judge in the present case found that a fraudulent claim of injury equates to fraud against the administrative process which qualifies as disobedience to a "lawful process" within the meaning of Section 27(b). He certified to the district court the facts surrounding his finding that the injury claimed did not occur, with the aforementioned recommended sanctions.³

We hold that the administrative law judge's resort to Section 27(b) is improper in this case. Under Section 27(b), the administrative law judge is to certify the facts by which a person refuses to comply with a "lawful order" of the administrative law judge or when he disobeys a "lawful process." Claimant in this case has not refused to comply with a lawful order of the administrative

³The administrative law judge noted the decisions of the courts of appeals in *Boland Marine & Manufacturing Co. v. Rihner*, 41 F.3d 997, 29 BRBS 43 (CRT) (5th Cir. 1995), and *Metropolitan Stevedore Co. v. Brickner*, 11 F.3d 887, 27 BRBS 132 (CRT) (9th Cir. 1993), that an administrative law judge does not have the authority to assess costs as a sanction pursuant to Section 26 of the Act. He interpreted these decisions as forbidding him from issuing a final order imposing sanctions, but not as forbidding him from recommending a sanction to the district court. Similarly, the administrative law judge found distinguishable the decision of the United States Court of Appeals for the Ninth Circuit in *Stevedoring Services of America v. Eggert*, 953 F.2d 552, 25 BRBS 92 (CRT) (9th Cir.), *cert. denied*, 112 S.Ct. 3056 (1992). The court reviewed a case in which the claimant was accused of concealing income he had received at the same time he was receiving compensation benefits. The Ninth Circuit rejected the district court's finding of jurisdiction to award reimbursement to employer for overpaid benefits pursuant to Section 27(b) as employer's complaint was not an action to enforce compliance with a direct order of the administrative law judge. *Eggert*, 953 F.2d at 556, 25 BRBS at 96 (CRT). The court noted that the administrative law judge had not ordered Eggert to repay the employer a sum certain; thus, Eggert had not disobeyed a lawful order of the administrative law judge within the meaning of Section 27(b). The administrative law judge in this case found that *Eggert* does not preclude his finding that claimant disobeyed a "lawful process" as opposed to a "lawful order."

law judge, nor is there the contention that he did so. Moreover, contrary to the administrative law judge's broad use of the term "lawful process," in a contempt provision such as Section 27(b), the term "process" is generally defined as "any means used by a court to acquire or exercise its jurisdiction over a person or over specific property." *Black's Law Dictionary* 1084 (West 5th ed. 1979); *see, e.g., State Farm Fire & Casualty Co. v. Miller Electric Co.*, 596 N.E.2d 169 (Ill. App. Ct. 1992). The term refers to the use of summons, writs, warrants or mandates issuing from a court in order to obtain jurisdiction over a person or property. *Black's Law Dictionary* at 1085. In this case, claimant has not refused the administrative law judge's exercise of jurisdiction over him and there is no allegation that he misbehaved during the administrative proceedings.⁴ Thus, claimant's alleged misconduct does not fall within the purview of Section 27(b).

Indeed, the administrative law judge's attempt to sanction claimant under Section 27(b) for pursuing a fraudulent claim must fail as the Act contains a specific provision providing sanctions for filing a fraudulent claim. Section 31(a) of the Act specifically provides that any false statement or representation, which is knowingly and willfully made for the purpose of obtaining benefits under the Act, is a felony, punishable by a fine of not more than \$10,000 or imprisonment not to exceed five years or both. 33 U.S.C. §931(a)(1). The United States Attorney for the district in which the injury is alleged to have occurred is to make every reasonable effort to investigate promptly any complaint made under this subsection.⁵ 33 U.S.C. §931(a)(2).

⁴The administrative law judge relied in part on the Supreme Court's decision in *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991). In this case, the Court discussed the long held understanding that courts have the power to impose silence, respect, and decorum in their presence and submission to their lawful mandates. *Chambers*, 501 U.S. at 42. The alleged sanctionable conduct in that case involved attempts to deprive the lower court of jurisdiction by acts of fraud, the filing of false and frivolous pleadings and attempts to reduce the plaintiff to exhausted compliance. The Court held that federal courts are invested with inherent powers necessary to achieve the orderly and expeditious disposition of cases and the discretion to fashion an appropriate sanction for conduct which abuses the judicial process. *Chambers*, 501 U.S. at 44. The sanctioned party was ordered to pay attorney's fees and litigation costs.

Unlike the petitioner in *Chambers*, it is not alleged in the instant case that claimant resisted control of the administrative law judge, refused to cooperate, or in anyway disrupted the administrative proceedings. While the Court noted that federal courts have the power to vacate their own judgments upon proof that a fraud has been perpetrated upon the court, a remedy for this action is specifically provided for under the Act at Section 31(a), 33 U.S.C. §931(a). *See discussion, infra.* We therefore hold that the administrative law judge erred in relying on the Supreme Court's decision in *Chambers* to find that claimant's efforts at establishing coverage in the present case constitutes disobedience against the administrative process.

⁵In its closing brief, the employer noted that it would defer prosecution of the fraud claim to the United States Attorney pursuant to Section 31 of the Act, 33 U.S.C. §931. Decision and Order at 3.

In this regard, we note the decision of the United States Court of Appeals for the Fifth Circuit in *Ceres Gulf v. Cooper*, 957 F.2d 1199, 25 BRBS 125 (CRT) (5th Cir. 1992). In that case, the employer filed an original action in district court to recover advance payments of compensation from a claimant to whom no additional benefits are owed. An administrative law judge had found that no work injury occurred, but that the Act did not allow a claim for reimbursement where no additional benefits are owed. The Board affirmed this latter finding on appeal. Employer did not appeal this finding under Section 21(c), 33 U.S.C. §921(c), but filed a claim in district court under the general federal question statute, 28 U.S.C. §1331, conceding that the Longshore Act does not provide the remedy it sought. The Fifth Circuit held that there is no jurisdiction in the district court under 28 U.S.C. §1331 because the Longshore Act is the exclusive scheme, and that no right of reimbursement exists under the Longshore Act. Especially pertinent to the case at bar is the court's statement that

the LHWCA addresses fraudulent claims in ways different from that urged by *Ceres Gulf*.

First it provides for a fine or imprisonment for "[a]ny claimant...who knowingly and willfully makes a false statement or representation for the purpose of obtaining a benefit or payment under" the LHWCA. §931(a)(1). The penalty does not include the recovery of payments obtained as a result of the false statement or representation.

Second, an employer may "discharge or refus[e] to employ a person who has been adjudicated to have filed a fraudulent claim," §948a. These were part of the amendments in 1984 to address a perceived problem of claimant fraud ... At that time, Congress declined to provide for recovery of benefits to combat such fraud, other than by the established offset method against LHWCA payments owing. [citations omitted]

Ceres Gulf, 957 F.2d at 1205-1206, 25 BRBS 130-131 (CRT). Thus, we hold that employer may not achieve the result of recoupment of previously paid compensation through a broad reading of the contempt provisions of Section 27 of the Act, as Section 31(a) is the sole remedy against a claimant who has allegedly filed a false claim.

In sum, the Act does not provide a method for employer to recoup payments, although wrongfully paid, when no future compensation payments are owed. *Id.*; *Eggert*, 953 F.2d at 552, 25 BRBS at 92 (CRT). Moreover, under Section 31(a), the Act specifically provides a remedy for allegations of fraud in obtaining benefits. As employer's complaint was not an action to enforce compliance with a direct order of the administrative law judge, and claimant did not disobey a lawful process, employer's attempt to recoup benefits allegedly obtained by fraud must fail. We therefore reverse the administrative law judge's finding that Section 27(b) is applicable and vacate his certification of facts to the district court and the recommendation that claimant be made to repay employer.

Accordingly, the Supplemental Decision Certifying Facts and Recommending Sanction and the Amended Supplemental Decision Certifying Facts and Recommending Sanction of the

administrative law judge are vacated.⁶

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

⁶We reject claimant's contention that Judge Smith displayed bias toward him as a result of Judge Smith's former employment at the law firm of Mullen & Filippi, the firm with which employer's counsel was affiliated at the time of the 1993 proceedings. Judge Smith fully disclosed his employment history, and claimant's former counsel did not object to his deciding this case.