BRB No. 97-1283

DOUGLAS J. PASCUAL, JR.	)	
	)	
Claimant-Petitioner	)	DATE ISSUED:
	)	
v.	)	
	)	
FIRST MARINE CONTRACTORS, INCORPORATED	)	
	)	
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION	)	
	)	
	)	
Employer/Carrier-Respondents	)	ORDER on MOTION for RECONSIDERATION

Employer has filed timely motions for reconsideration of the Board's Decision and Order in the captioned case. 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407(a). We hereby grant employer's request to reconsider this case but, for the following reasons, we deny the relief requested.

To briefly reiterate the facts of this case, claimant, a longshoreman, was injured during the course of his employment on August 16, 1995; claimant was subsequently hospitalized for five days and has not returned to work since the day of this work incident. In his decision, the administrative law judge, based upon his conclusion that any incident which took place at work did not cause or aggravate claimant's physical condition, denied claimant's claim for both disability and medical benefits.

On appeal, the Board held that the administrative law judge's conclusion that claimant was not entitled to either disability or medical benefits was inconsistent with his finding that it is uncontested that claimant suffered some disabling pain as a result of the August 16, 1995, work incident. Accordingly, the Board vacated the administrative law judge's denial of benefits to claimant and remanded the case for a determination of the duration of claimant's disability due to the work accident. *Pascual v. First Marine Contractors, Inc.*, BRB No. 97-1283 (June 17, 1998)(unpublished).

In its motions for reconsideration, employer alleges (1) that the Board's decision in this case was based upon an erroneous interpretation of the evidence, and (2) that pursuant to the Appropriations Act of 1998, Pub. L. 105-78, and the decision of the United States Court of Appeals for the Third Circuit in *Director, OWCP v. Sun Ship, Inc.*, 150 F.3d 288, 32 BRBS 132 (CRT)(3d Cir. 1998), the administrative law judge's decision in the instant case was automatically affirmed on June 17, 1998, the date on which the Board rendered its decision on appeal. Claimant has not responded to these motions.

We will initially address employer's contention that, pursuant to the Appropriations Act of 1998 and the holding in *Sun Ship,* the administrative law judge's decision in the instant case was automatically affirmed on June 17, 1998, the date upon which the Board issued its decision. Contrary to employer's assertions, the decision of the United States Court of Appeals for the Third Circuit in *Sun Ship* is not dispositive of the issue raised in this case, which arises within the jurisdiction of the United States Court of Appeals for the Fifth Circuit. The Third Circuit in *Sun Ship* addressed the Appropriations Act of 1996, Pub. L. 104-134, 110 Stat. 1321, which states, in relevant part, that:

> [any decision of an administrative law judge] pending a review by the Benefits Review Board for more than one year shall, if not acted upon by the Board **before September 12, 1996,** be considered affirmed by the Benefits Review Board **on that date**, and shall be considered the final order of the Board for purposes of obtaining a review in the United States courts of appeals.

110 Stat. at 1321-219 (emphasis added). In focusing upon the language of "before September 12, 1996" contained in the 1996 Appropriations Act, the court concluded that any case older than one year was administratively affirmed as of midnight September 11, 1996, if not acted upon by the Board as of that time. The court reasoned that a contrary determination would convert the term "before" into "on or before;" thus, as the *Sun Ship* case had been pending before the Board for three years, the court held that the Board's failure to act "before" September 12, 1996, rendered its decision on that date a nullity. *Sun Ship,* 150 F.3d at 292, 32 BRBS at 134-135 (CRT).

In contrast to the *Sun Ship* case, however, the decision on the appeal in the instant case, filed June 17, 1997, falls under the 1998 Appropriations Act, Pub. L. 105-78, 111 Stat. 1467. A comparison of the 1998 and the 1996 Appropriation Acts

reveals a significant change in the statutory language.[1] Specifically, the 1998 Appropriations Act states, in pertinent part, that:

> no funds made available by this Act may be used...to review a decision under the...Act...that has been appealed and that has been pending before the Benefits Review Board **for more than 12 months**; provided further, that any such decision pending a review by the Benefits Review Board **for more than one year** shall be considered affirmed by the Benefits Review Board on that date and shall be considered the final order of the Board for purposes of obtaining a review in the United States courts of appeals... .

111 Stat. 1467, 1476 (emphasis added). Accordingly, the holding of the court in *Sun Ship*, addressing the 1996 Appropriations Act which refers to issuance of decisions "before" a specific date, *i.e.*, September 12, 1996, is not applicable to the instant case, which requires interpretation of the language of the 1998 Appropriations Act, referring to "more than one year."

Analysis of the proper interpretation of a statute must begin with the language of the statute itself. *See Consumer Prod. Safety Comm. v. GTE Sylvania, Inc.*, 447 U.S. 102 (1980). If the language adopted by Congress is unambiguous, there is no need to resort to extrinsic sources to further illuminate its meaning. *United States v. Piervinanzi*, 23 F.3d 670, 677 (2d Cir. 1994). Moreover, unless otherwise defined, individual statutory words are assumed to carry their "ordinary, contemporary common meaning." *Perrin v. United States*, 444 U.S. 343 (1976).

[1]The language contained in the 1997 Appropriations Act, Pub. L. 104-208, 110 Stat. 3009, in effect at the time the appeal was filed is the same as that in the 1998 Act which applied on the date the decision was issued.

While the 1998 Appropriations Act itself contains no provision governing the computation of time, it refers to "more than one year" as well as "more than twelve months." While a "year" is defined as the period of time of about 365 1/4 solar days[2] required for one revolution of the earth around the sun, *see Merriam-Webster's Collegiate Dictionary*, 1366 (9th ed. 1986), at issue herein is when does a year begin to run and, conversely, when does it end. Employer implicitly argues that the applicable year in this case began at 12:01 a.m. June 17, 1997, and ended at 12 midnight June 16, 1998. For the following reasons, we reject employer's argument, and we hold that the Board's June 17, 1998, decision in this case is viable.

The issue raised here concerns when the one year, or 12 month, period began and ended, and the Federal Rules of Civil Procedure (FRCP), as well as the Board's regulations, contain specific provisions governing this question. Under the FRCP, Rule 6(a) provides:

> In computing any period of time prescribed or allowed by these rules..., or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included.

FRCP 6(a). Similarly, Section 802.221 of the Board's regulations states in relevant part:

> (a) In computing any period of time prescribed by law or allowed by these rules, by direction of the Board, or by any applicable statute which does not provide otherwise, the day from which the designated period of time begins to run shall not be included... .

20 C.F.R. §802.221(a)(1997). Accordingly, for a case such as the one at bar which was filed on June 17, 1997, day one of the 365 days allowed for the Board to render a decision was June 18, 1997, and day 365 was June 17, 1998. Thus, the Board's decision in the instant case, issued on June 17, 1998, was issued within one year, or twelve months, under the FRCP and the Board's regulations. It follows that the appeal was not pending for "more than" the specified time period under the Appropriations Act.

Decisions issued by the Board under other provisions of the Act consistently reflect this method of computation, *i.e.*, the running of a period of time begins the day

[2]A day is the period of time during which the earth makes one revolution on its axis, the average length of this interval being 24 hours. *Merriam-Webster's Collegiate Dictionary*, 294 (10th ed. 1997).

following the filing date. For example, in *Irwin v. Navy Resale Exchange*, 29 BRBS 77 (1995), the Board reversed an administrative law judge's determination that an employer's compensation payment received on February 6, 1991, twelve days after the January 25, 1991, filing of the administrative law judge's decision, was timely under Section 14(f) of the Act, 33 U.S.C. §914(f). In so holding, the Board alluded to the decision of the United States Court of Appeals for the Fourth Circuit in *Reid v. Universal Maritime Service Corp.*, 41 F.3d 200, 28 BRBS 118 (CRT)(4th Cir. 1994), that the 10-day requirement set forth in Section 14(f) means what it says - that ten days is ten, twenty-four hour periods, as a day is commonly understood. Although the issue in *Irwin* was whether to include Saturdays, Sundays, and holidays when computing time when the period for compliance was ten days or less, all of the parties, including the Board and the administrative law judge, calculated the time from the January 25, 1991, filing of the administrative law judge's decision to the February 6, 1991, receipt as twelve days, a result which is reached by utilizing the day following the filing of the administrative law judge's decision as "day one."

Likewise, in *Burgo v. General Dynamics Corp.*, 122 F.3d 140, 31 BRBS 97 (CRT), *reh'g denied,* 128 F.3d 801 (2d Cir. 1997), *cert. denied*, 118 S.Ct. 1839 (1998), the administrative law judge calculated the time between the filing of a decision on September 13, 1994, to the receipt of the full amount due on September 26, 1994, as thirteen days after the order was filed, not fourteen as this employer would have calculated.

Accordingly, we hold that, for purposes of calculating the one year period set forth in the Appropriations Act of 1998, the time period begins with the day following the filing of an appeal. Thus, as the Board's decision in the instant case was issued within the one year/365 days/12 month statutory period set forth in the 1998 Appropriations Act, it did not violate the statutory provisions for not exceeding one year or twelve months. Employer's argument is thus rejected.

Employer next avers that the Board mistakenly interpreted the evidence of record in rendering its decision. Specifically, employer asserts that it has set forth evidence sufficient to establish rebuttal of the Section 20(a), 33 U.S.C. §920(a), presumption of causation. Employer, however, has identified no unequivocal evidence sufficient to sever the presumed causal link between claimant's injury and his employment. Moreover, in its decision the Board remanded this case for the administrative law judge, as fact-finder, to set forth and address all of the relevant evidence regarding the nature and extent of claimant's disability. Thus, after consideration of employer's contentions and review of the Board's disposition of this case, we reject employer's assertions of error.

In light of the aforementioned, employer's motions for reconsideration are granted, but the relief requested is denied. 20 C.F.R. §802.409. The Board's prior

Decision and Order is affirmed in all respects.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge