

BRB No. 09-0518
OWCP No. 06-199408

D.R.)
)
Claimant-Petitioner)
)
v.)
)
PATE STEVEDORING COMPANY)
)
and)
)
AMERICAN INTERNATIONAL) DATE ISSUED: 04/28/2009
SPECIALTY LINES INSURANCE)
COMPANY)
c/o AIG CLAIM SERVICES)
)
Employer/Carrier-)
Respondents)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest) ORDER

Claimant, who is without legal counsel, has filed a timely notice of appeal of employer's Notice of Suspension of Compensation dated March 13, 2009. This appeal is assigned the Board's docket number BRB No. 09-0518. All correspondence concerning this appeal must bear this number.

In a Decision and Order dated January 29, 2008, the administrative law judge awarded claimant temporary total disability benefits from August 2, 2006 through May 23, 2007, and ongoing temporary partial disability benefits from May 23, 2007 based on a loss of wage-earning capacity. Employer subsequently filed a motion for modification with the district director, 33 U.S.C. §922, apparently on the ground that claimant had recovered from his work injury and could return to his usual work without restrictions. In

addition, employer alleged that claimant's benefits should be suspended because he did not return Form LS-200, Report of Earnings. Employer requested that an informal conference be scheduled on its motion.

The district director scheduled a telephonic informal conference for March 12, 2009. By letter dated March 8, 2009, claimant, who was not represented by counsel, stated that the conference should be rescheduled, as he was seeking the administrative law judge's participation. On March 13, 2009, employer filed a Notice of Suspension of Compensation because claimant did not participate in the scheduled informal conference.

We must dismiss claimant's appeal because the district director did not take any final action on claimant's claim that can be appealed. *Maria v. Del Monte/Southern Stevedore*, 22 BRBS 132 (1989); *Shoemaker v. Schiavone and Sons, Inc.*, 20 BRBS 214 (1988). The district director did not order the suspension of claimant's compensation. Rather, employer unilaterally suspended claimant's compensation payments. Employer may do this, but it runs the risk of being held in default in the event that it is determined that it improperly suspended the benefits awarded by the administrative law judge. Claimant's remedy in this situation is to apply for a default order from the district director pursuant to Section 18(a) of the Act, 33 U.S.C. §918(a). *Shoemaker*, 21 BRBS 214; *see also* 20 C.F.R. §702.372. Claimant is advised that employer is entitled to seek modification of the administrative law judge's award of benefits, as well as to seek the suspension of compensation if it believes claimant did not comply with a request for earnings information. 33 U.S.C. §§908(j), 922; 20 C.F.R. §§702.285, 702.373. If the parties cannot resolve the issues informally before the district director, any party may request an evidentiary hearing before an administrative law judge.¹ *Ingalls Shipbuilding, Inc. v. Asbestos Health Claimants*, 17 F.3d 130, 28 BRBS 12(CRT) (5th Cir. 1994); 20 C.F.R. §702.316.

¹ Claimant is advised that the administrative law judge is not a proper party to any informal conference scheduled by the district director.

Accordingly, claimant's appeal is dismissed, and the case is returned to the district director.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge