



BRB No. 17-0106

MYRA TYLER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MAIN INDUSTRIES, INCORPORATED	)	DATE ISSUED: <u>Aug. 15, 2017</u>
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY	)	
ASSOCIATION, c/o AMBERCROMBIE,	)	
SIMMONS & GILLETTE	)	
	)	
Employer/Carrier-	)	
Respondents	)	DECISION and ORDER

Appeal of Order Dismissing Case of Paul C. Johnson, Jr., Administrative Law Judge, United States Department of Labor.

Myra Tyler, Winton, North Carolina.

F. Nash Bilisoly and Kimberley Herson Timms (Vandeventer Black, LLP), Norfolk, Virginia, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BOGGS and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Claimant, appearing without representation, appeals the Decision and Order (2015-LHC-00769) of Administrative Law Judge Paul C. Johnson, Jr., 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). In an appeal by a claimant without legal representation, the Board will review the administrative law judge's findings of fact and conclusions of law to determine if they are rational, supported by substantial evidence, and in accordance with law. If they are, they must be

affirmed. 33 U.S.C. §921(b)(3); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

This case has previously been before the Board. To briefly reiterate the procedural history and background, claimant, on August 21, 2008, filed a claim under the Act for injuries to her tailbone, back, neck and right ankle which she allegedly sustained on July 31, 2008, while working for employer. On November 20, 2009, claimant filed a second claim for benefits, alleging she sustained bilateral carpal tunnel syndrome (CTS) as a result of a January 22, 2009 work injury. Claimant’s claims were consolidated and, in a Decision and Order dated December 12, 2011, Administrative Law Judge Krantz awarded claimant temporary total disability benefits from August 1 through December 8, 2008, and medical benefits, for her work-related tailbone fracture and resulting back pain. Judge Krantz found, however, that employer had already paid claimant all of the compensation to which claimant was entitled. Judge Krantz found that claimant did not establish that her remaining alleged injuries were related to her employment accidents. *Tyler v. Main Industries, Inc.*, 2011-LHC-00702, 00703 (Dec. 12, 2011) (Decision and Order).

Claimant appealed this decision. The Board, in a Decision and Order issued on December 17, 2012, vacated the finding that claimant was not entitled to the Section 20(a) presumption with regard to her CTS and remanded the case for further consideration of that issue. In all other respects, the Board affirmed Judge Krantz’s decision. *Tyler v. Main Industries, Inc.*, BRB No. 12-0226 (Dec. 17, 2012) (unpub.). In a Decision and Order on Remand dated on September 24, 2013, Judge Krantz awarded claimant temporary total disability benefits commencing January 22, 2009, and medical benefits, for her work-related CTS. This decision was not appealed.

On January 26, 2015, claimant filed a motion for Section 22 modification, seeking additional compensation for her tailbone and back conditions. On August 17, 2016, Administrative Law Judge Johnson (the administrative law judge) issued an Order to Show Cause why claimant’s claim should not be dismissed. In responding to the administrative law judge’s Order, claimant submitted multiple documents, while employer urged that the case be dismissed.<sup>1</sup> In his Order Dismissing Case dated October

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<sup>1</sup> In addition to the motion for modification of her tailbone/back claim, Case No. 2015-LHC-00769, claimant, on January 26, 2015, filed a motion for modification of her CTS award, Case No. 2015-LHC-01107. On September 21, 2015, the administrative law judge consolidated these cases. In an Order issued October 17, 2016, the administrative law judge severed the cases for purposes of decision. On October 19, 2016, the administrative law judge dismissed claimant’s motion for modification of her CTS award, finding the motion was untimely filed. This order was not appealed.

17, 2016, the administrative law judge addressed claimant's submissions in support of her motion for modification, concluded that claimant's motion was untimely filed, and consequently dismissed claimant's motion for modification.

On appeal, claimant challenges the administrative law judge's dismissal of her motion for modification. Employer responds, urging affirmance.

Section 22 of the Act provides in relevant part:

Upon his own initiative, or upon the application of any party in interest ... on the ground of a change in conditions or because of a mistake in a determination of fact by the [administrative law judge], the [administrative law judge] may, *at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one year after the rejection of a claim,* review a compensation case . . . and in accordance with such section issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation. . . .

33 U.S.C. §922 (emphasis added). Thus, a request for modification under Section 22 must occur within one year of the last payment of compensation. *Wheeler v. Newport News Shipbuilding & Dry Dock Co.*, 43 BRBS 179 (2010), *aff'd*, 637 F.3d 280, 45 BRBS 9(CRT) (4th Cir.), *cert. denied*, 565 U.S. 1058 (2011). If a claim is denied, the one year begins to run on the date the decision becomes final; thus a modification request must be filed within one year after the conclusion of the appellate process. *Id.*; *see also Alexander v. Avondale Industries, Inc.*, 36 BRBS 142 (2002).

Our review of the administrative file indicates that the administrative law judge's findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. Specifically, on August 21, 2008, claimant filed a claim for injuries she allegedly sustained to her back and tailbone while working for employer on July 31, 2008. Claimant's back and tailbone claim was addressed in Judge Krantz's December 12, 2011 Decision and Order. Judge Krantz concluded that claimant's injuries were work-related, but that employer had already paid claimant all of the disability benefits to which she was entitled for those conditions. Therefore, Judge Krantz denied additional benefits. The Board affirmed Judge Krantz's denial of additional disability benefits for claimant's work-related tailbone and back conditions in a decision issued on December 17, 2012. *Tyler*, slip op. at 7-8. Thus, claimant had to file her motion for modification with regard to this claim within one year after the last rejection of that claim. *See Alexander*, 36 BRBS at 146. Claimant, however, took no further action with regard to her tailbone/back claim until she filed her motion for modification on January 26, 2015, approximately two years after the denial of that claim became final. Based on

these undisputed facts, the administrative law judge properly found that claimant's motion for modification of her tailbone/back claim was not timely filed. Therefore, as it accords with law, we affirm the administrative law judge's dismissal of claimant's January 26, 2015, motion for modification as it was untimely filed.<sup>2</sup> *Id.*; *Moore v. Int'l Terminals, Inc.*, 35 BRBS 28 (2001).

Accordingly, the administrative law judge's Order Dismissing Case is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief

Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge

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RYAN GILLIGAN  
Administrative Appeals Judge

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<sup>2</sup> We are unable to discern whether claimant seeks medical benefits for her work-related conditions. As a claim for medical benefits is not time-barred, *see Ryan v. Alaska Constructors, Inc.*, 24 BRBS 65 (1990), claimant may contact the district director should a dispute arise regarding medical care for her work-related tailbone and back conditions. *See* 20 C.F.R. §702.407; *Lynch v. Newport News Shipbuilding & Dry Dock Co.*, 39 BRBS 29 (2005).