BRB Nos. 00-0396
and 01-0519

EDWARD NEAL MARKS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
TRINITY MARINE GROUP	)	
	)	
and	)	
	)	
RELIANCE NATIONAL INDEMNITY COMPANY	)	DATE ISSUED: Feb. 7, 2002
	)	
	)	
Employer/Carrier-Petitioners	)	DECISION and ORDER

Appeals of the Decision and Order and the Decision and Order on Section 22 Modification of Lee J. Romero, Jr., Administrative Law Judge, United States Department of Labor.

J. Paul Demarest and Seth H. Schaumburg (Favret, Demarest, Russo & Lutkewitte), New Orleans, Louisiana, for claimant.

Collins C. Rossi and Richard C. Ely, Jr., Metairie, Louisiana, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order and the Decision and Order on Section 22 Modification (1999-LHC-586) of Administrative Law Judge Lee J. Romero, 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). We must affirm the findings of fact and conclusions of law of the administrative law judge if they 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, who was employed as a welder for employer, suffered a work-related back injury on May 2, 1997. Following his injury, claimant continued to work for employer in a light duty capacity until he was taken off work by Dr. Fleming, his treating orthopedist, on June 23, 1997. Employer voluntarily paid claimant temporary total disability compensation from June 24, 1997 through September 25, 1998. 33 U.S.C. §908(b).

In a Decision and Order issued on November 30, 1999, the administrative law judge found that claimant had not yet reached maximum medical improvement and that he was unable to return to his former employment duties as a welder for employer. The administrative law judge further found that employer, based upon the labor market survey conducted by Ms. Favaloro, established the availability of suitable alternate employment as of May 4, 1999. Accordingly, the administrative law judge awarded claimant temporary total disability compensation from May 2, 1997 through May 3, 1999, and temporary partial disability compensation from May 4, 1999, and continuing. The administrative law judge additionally found claimant entitled to future medical treatment, including the surgical intervention recommended by his treating physician, Dr. Fleming, for his back condition arising from the May 2, 1997, work injury.

Employer appealed this decision to the Board. BRB No. 00-0396. Thereafter, employer moved that the Board suspend its appeal pending consideration by the administrative law judge of employer's request for modification under Section 22 of the Act, 33 U.S.C. §922, of the administrative law judge's Decision and Order. By Order dated March 13, 2000, the Board dismissed employer's appeal and remanded the case to the administrative law judge for modification proceedings. 33 U.S.C. §922; 20 C.F.R. §§725.310, 802.301.

In the course of modification proceedings before the administrative law judge, a second hearing was held and evidence submitted with respect to the contested issues concerning employer's liability for medical care provided by Dr. Phillips following the retirement of claimant's authorized physician Dr. Fleming, and whether there was a change in claimant's physical or economic condition. In his Decision and Order on Section 22 Modification issued on January 31, 2001, the administrative law judge denied employer's modification request in its entirety, finding employer responsible for the medical treatment provided by Dr. Phillips and determining that there had been no change in claimant's physical or economic condition.

Thereafter, employer filed an appeal of the administrative law judge's denial of modification and additionally requested that its prior appeal, BRB No. 00-0396, be reinstated

by the Board. By Order dated March 22, 2001, the Board acknowledged employer's appeal of the administrative law judge's modification denial, BRB No. 01-0519, reinstated employer's appeal in BRB No. 00-0396, and consolidated the two appeals for purposes of rendering a decision. Thus, in the appeals presently pending before the Board, employer challenges the administrative law judge's original Decision and Order awarding benefits, as well as the administrative law judge's Decision and Order denying employer's request for modification.[1] Claimant responds, urging affirmance of the administrative law judge's decisions.

Section 22 of the Act, 33 U.S.C. §922, provides the only means for changing otherwise final decisions; modification pursuant to this section is permitted based upon a mistake of fact in the initial decision or a change in claimant's physical or economic condition. *See Metropolitan Stevedore Co. v. Rambo [Rambo I]*, 515 U.S. 291, 30 BRBS 1(CRT) (1995). It is well-established that the party requesting modification bears the burden of proof. *Metropolitan Stevedore Co. v. Rambo [Rambo II]*, 521 U.S. 121, 31 BRBS 54(CRT) (1997); *Kinlaw v. Stevens Shipping & Terminal Co.*, 33 BRBS 68 (1999), *aff'd mem.*, 238 F.3d 414 (4th Cir. 2000)(table). To reopen the record under Section 22, the moving party must allege a mistake of fact or change in condition and assert that the evidence to be produced or of record would bring the case within the scope of Section 22. *See Kinlaw*, 33 BRBS 73; *Duran v. Interport Maintenance Co.*, 27 BRBS 8, 14 (1993).

[1]Employer notes, with respect to its appeal of the administrative law judge's original Decision and Order, that the retirement of Dr. Fleming has rendered moot the issue of Section 7, 33 U.S.C. §907, medical benefits for any surgical treatment recommended by Dr. Fleming. *See* Emp. brief at 2. Although employer, in its consolidated Petition for Review and brief, does not request that its appeal of the administrative law judge's original Decision and Order, BRB No. 00-0396, be dismissed, the arguments presented in its brief are directed to the administrative law judge's denial of modification. Accordingly, it is these arguments which will be considered by the Board. *See* 20 C.F.R. §802.211.

Where a party seeks modification based on a change in condition, an initial determination must be made as to whether the petitioning party has met its burden of demonstrating that there has been a change in claimant's condition. *See Jensen v. Weeks Marine, Inc.*, 34 BRBS 147, 149 (2000); *Duran*, 27 BRBS at 14. This initial inquiry involves consideration of whether the newly submitted evidence is sufficient to bring the claim within the scope of Section 22. *Jensen,* 34 BRBS at 149. If so, then the administrative law judge must determine whether modification is warranted by considering all of the relevant evidence of record to discern whether there was, in fact, a change in claimant's physical or economic condition from the time of the initial award to the time modification is sought. *Id.* Once the petitioner meets its initial burden of demonstrating a basis for modification, the standards for determining the extent of disability are the same as in the initial proceeding. *See Rambo II*, 521 U.S. 121, 31 BRBS 54(CRT); *Jensen*, 34 BRBS at 149; *Delay v. Jones Washington Stevedoring Co.*, 31 BRBS 197, 204 (1998).

In the instant case, the administrative law judge determined, consistent with the Board's decisions in *Jensen*, 34 BRBS at 149 and *Duran,* 27 BRBS at 14, that employer met its burden of offering evidence of a change in condition sufficient to bring the claim within the scope of Section 22. Accordingly, the administrative law judge proceeded to consider all of the relevant record evidence regarding the issue of employer's liability for medical care rendered by Dr. Phillips as well as whether claimant's physical or economic condition had changed.

The administrative law judge first considered the issue of employer's liability pursuant to Section 7(d) of the Act, 33 U.S.C. §907(d), for the payment of Dr. Phillips's treatment of claimant.[2] As acknowledged by the administrative law judge, the Board has held that where

[2]Section 7(d) of the Act, 33 U.S.C. §907(d), sets forth the prerequisites for an employer's liability for payment or reimbursement of medical expenses incurred by claimant. The Board has held that Section 7(d) requires that a claimant request his employer's authorization for medical services performed by an physician, including the claimant's initial choice. *Ezell v. Direct Labor, Inc.*, 33 BRBS 19, 28 (1999); *Maguire v. Todd Shipyards Corp.,* 25 BRBS 299 (1992); *Shahady v. Atlas Tile & Marble,* 13 BRBS 1007 (1981)(Miller, J., dissenting), *rev'd on other grounds,* 682 F.2d 968 (D.C. Cir. 1982), *cert. denied*, 459 U.S. 1146 (1983). Where a claimant's request for authorization is refused by the employer, claimant is released from the obligation of continuing to seek approval for his subsequent treatment and thereafter need only establish that the treatment he subsequently procured on his own initiative was reasonable and necessary in order to be entitled to such treatment at employer's expense. *See Ezell,* 33 BRBS at 28; *Schoen v. U.S. Chamber of Commerce,* 30 BRBS 112, 113 (1996); *Anderson v. Todd Shipyards Corp.,* 22 BRBS 20, 23 (1989).

a claimant's authorized physician retires from practice and refers his patients to a new doctor, no new authorization is required and the new doctor must be considered to be the physician authorized to provide medical treatment. *Maguire v. Todd Shipyards Corp.*, 25 BRBS 299, 301-302 (1992). Stating that there was a factual dispute as to whom Dr. Fleming referred claimant for medical treatment, the administrative law judge initially examined the record evidence relevant to this issue.[3] Specifically, the administrative law judge first considered the testimonial and written evidence in support of claimant's position that Dr. Fleming referred him to Dr. Rozas of the Bone and Joint Clinic, which included the following: that upon reporting to that clinic for his November 29, 1999, appointment he was under the impression that he was to see Dr. Rozas; that he was not made aware that his examination was actually conducted by Dr. Gallagher, another physician practicing in the clinic, until after the examination by Dr. Gallagher was completed; and that he never considered Dr. Gallagher to be his choice of treating physician. The administrative law judge next considered the contrary evidence offered by employer in support of its contention that Dr. Fleming referred claimant to Dr. Gallagher, *i.e.*, that claimant was advised that his appointment was with Dr. Gallagher and that claimant objected to Dr. Gallagher only after Dr. Gallagher released claimant with no work restrictions. After evaluating the evidence of record, the administrative law judge found, first, that the weight of the credible evidence demonstrates that Dr. Fleming referred claimant to Dr. Rozas, and, second, that claimant never accepted Dr. Gallagher as his treating physician. *See* Decision and Order on Modification at 17-19.

Although employer argues on appeal that the accounts of events provided by claimant and his wife are contradicted by various pieces of documentary evidence and by the testimony of Dr. Gallagher and medical assistant Ms. Patai, we conclude that the competing characterization of the record evidence and assessment of the witnesses' credibility offered by employer does not provide a basis for overturning the administrative law judge's credibility determinations and evaluation of the evidence. We note, in this regard, that an administrative law judge is entitled to evaluate the credibility of all witnesses, and has considerable discretion in evaluating the evidence of record. *See James J. Flanagan Stevedores, Inc. v. Gallagher*, 219 F.3d 426, 34 BRBS 35(CRT) (5th Cir. 2000); *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 373 U.S. 954 (1963). Moreover, the administrative law judge is entitled to draw his own inferences from the evidence, and his selection among competing inferences must be affirmed if supported by substantial evidence and in accordance with law. *See Gallagher*, 219 F.3d at 430, 34 BRBS at 37(CRT); *Mendoza v. Marine Personnel Co., Inc.*,

[3]The administrative law judge correctly found that the record in this case contains neither documentation of Dr. Fleming's referral nor testimony by Dr. Fleming. *See* Decision and Order on Section 22 Modification at 16-17.

46 F.3d 498, 29 BRBS 79(CRT) (5th Cir. 1995). As the administrative law judge's assessment of the credibility of each of these witnesses and his inferences drawn from the record evidence are rational, they are affirmed. *Id.*

Having affirmed the administrative law judge's finding that following the retirement of Dr. Fleming, Dr. Rozas was to be considered claimant's authorized treating physician, we also affirm his further finding that upon the unavailability of Dr. Rozas to provide medical treatment to claimant, claimant was presented with the opportunity to choose a new treating physician. We further affirm the administrative law judge's determination that employer's refusal to consent to claimant's request to select Dr. Phillips as his treating physician released claimant from his obligation to continue to seek approval for his subsequent treatment,[4] as well as his finding that claimant thereafter satisfied the requirement of establishing that the treatment he subsequently procured from Dr. Phillips on his own initiative was reasonable and necessary. *See Ezell v. Direct Labor, Inc.*, 33 BRBS 19, 28 (1999); *Schoen v. U.S. Chamber of Commerce*, 30 BRBS 112 (1996); *Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989). Accordingly, the administrative law judge's determination that employer is responsible for claimant's medical treatment provided by Dr. Phillips is affirmed. *Id.*

[4]In this regard, we also uphold the administrative law judge's rejection of employer's contention that claimant's delay in requesting treatment by Dr. Phillips resulted in a waiver of his right to choose Dr. Phillips as his treating physician.

After determining that Dr. Phillips is claimant's choice of treating physician, the administrative law judge next considered whether the medical and vocational evidence submitted in the modification proceeding established a change in claimant's physical condition or residual wage-earning capacity. In subsequently rejecting employer's contention that claimant's physical condition had improved following the issuance of his original Decision and Order, the administrative law judge credited Dr. Phillips's opinion, which he found consistent with Dr. Fleming's opinion that claimant's work-related disability precludes his return to his former employment. *See* 2d EX-N, p.18. On appeal, employer contends that the administrative law judge should have discounted the opinion of Dr. Phillips and, rather, should have found persuasive Dr. Gallagher's opinion that claimant is capable of returning to his previous employment duties with employer. Employer requests, in this regard, that the Board take judicial notice of the ruling of a Louisiana state workers' compensation judge in the matter of *Paul J. Simmons v. Lowes Home Imp. Center*, wherein Dr. Phillips was cited for being in violation of LSA-R.S. 23:1208 and his medical opinion was discounted in its entirety. We decline to disturb the administrative law judge's credibility determinations and weighing of the evidence on the basis urged by employer. The state adjudicator's evaluation of Dr. Phillips's medical opinion in a case involving a different claimant and medical evidence does not affect the administrative law judge's authority to weigh the evidence in this case.[5] It is well-established, moreover, that the Board does not have the authority to engage in a *de novo* review of the evidence or to substitute its credibility determinations for those of the administrative law judge. *See Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 944, 25 BRBS 78, 80(CRT)(5th Cir. 1991); *see also Gallagher*, 219 F.3d at 430, 34 BRBS at 37(CRT); *Mendoza*, 46 F.3d at 500-501, 29 BRBS at 80-81(CRT). In addition, the United States Court of Appeals for the Fifth Circuit, wherein this case arises, has declined to adopt a rule that an administrative law judge must specifically discuss the evidence that is being rejected. *See Gallagher*, 219 F.3d at 430, 34 BRBS at 37(CRT); *Falco v. Shalala*, 27 F.3d 160, 163 (5th Cir. 1994). As the administrative law judge's credibility determinations in this case are rational and the credited opinions of Drs. Phillips and Fleming constitute substantial evidence in support of the administrative law judge's finding that claimant remains unable to perform his former employment, the administrative law judge's conclusion that claimant's physical condition has not changed since the issuance of the original Decision and Order is affirmed. *See Gallagher*, 219 F.3d at 430, 34 BRBS at 37(CRT); *Mendoza*, 46 F.3d at 500-501, 29 BRBS at 80-81(CRT).

[5]In the case cited by employer, the adjudicator rejected Dr. Phillips's opinion, finding that his findings and decision to perform surgery on claimant's back were based on claimant's subjective complaints. The judge found, however, that claimant's credibility was flawed as he engaged in symptom magnification, malingering, and exaggerations of pain and false statements to his doctors. Thus, the judge credited the opinions of three competent surgeons who stated that surgery was unnecessary.

Next, the administrative law judge determined that the vocational evidence submitted by employer in the modification proceeding failed to demonstrate a change in claimant's residual wage-earning capacity. Specifically, the administrative law judge credited Dr. Phillips's opinion that claimant could perform the physical requirements of three of the jobs listed in Ms. Favaloro's labor market survey: unarmed security officer, dispatcher, and checker. Thus, the administrative law judge found that employer established the availability of suitable alternate employment with these three positions. Averaging the hourly wage rate ranges for these three positions,[6] the administrative law judge determined that claimant's residual weekly wage-earning capacity is $267.60, an amount substantially similar to the $270.40 residual weekly wage-earning capacity figure reached in his original Decision and Order in this case. *See* 33 U.S.C. §908(h).

[6]The United States Court of Appeals for the Fifth Circuit has upheld the calculation of post-injury wage-earning capacity on the basis of averaging the range of salaries identified for suitable alternate employment. *See Avondale Industries, Inc. v. Pulliam*, 137 F.3d 326, 32 BRBS 65(CRT) (5th Cir. 1998); *Shell Offshore, Inc. v. Cafiero,* 122 F.3d 312, 318, 31 BRBS 129, 133(CRT) (5th Cir. 1997). Employer does not challenge on appeal the administrative law judge's use of averaging in the instant case.

Employer challenges the administrative law judge's post-injury wage-earning capacity calculation on the basis that the administrative law judge failed to consider in his calculation the shop welder and courier positions listed in Ms. Favaloro's labor market survey as suitable alternate employment available to claimant. Contending that other evidence indicates that claimant could perform the shop welder and courier positions, employer argues that the administrative law judge erred in discounting these two jobs which were disapproved by Dr. Phillips. Specifically, employer first contends that Dr. Phillips's disapproval of the shop welder position on the basis that claimant could not lift up to 50 pounds is unsupported by the record. However, contrary to employer's assertion, in her letters to Dr. Gallagher dated August 1, 2000 and August 17, 2000, Ms. Favaloro described the shop welder job requirements as including occasional lifting of up to 50 pounds. *See* 2d EX-J, pp. 1, 4. With respect to the courier position, employer avers that Dr. Phillips's deposition testimony that claimant would be required to lift 40 pounds is inconsistent with the job requirements provided by Ms. Favaloro.[7] In expressing his concern about claimant's ability to perform the courier position identified by Ms. Favaloro, however, Dr. Phillips mentioned not only the lifting involved but also the fact that a courier would be required to get in and out of the car all day. *See* 2d D&O at 10; 2d EX-N, p. 21. Thus, the administrative law judge's implicit determination that the shop welder and courier positions offered by employer were unsuitable for claimant is rational and supported by substantial evidence. *See generally Mijangos*, 948 F.2d 941, 25 BRBS 78(CRT); *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 14 BRBS 156 (5th Cir. 1981). As the administrative law judge's determination, on modification, of claimant's post-injury wage-earning capacity is reasonable, *see Avondale Industries, Inc. v. Pulliam*, 137 F.3d 326, 32 BRBS 65(CRT) (5th Cir. 1998), his conclusion that employer failed to establish a change in claimant's economic condition is affirmed. *See generally Jensen*, 34 BRBS 147.

Lastly, we address claimant's counsel's request for an attorney's fee for work performed before the Board in connection with his defense of employer's multiple appeals. Claimant's counsel initially requested a fee of $6,669.65, representing 2 hours of legal services performed by J. Paul Demarest at the hourly rate of $175 and 39.9 hours of legal services performed by Seth H. Schaumberg at the hourly rate of $150, as well as expenses of $334.65, for work performed in regard to BRB No. 00-0396. Employer submitted objections to this fee petition, challenging its liability for a fee and the adequacy of the fee petition. In addition, employer contended that the hourly rates and the number of hours claimed are excessive. Employer also challenged specific entries by claimant's counsel as reflecting either uncompensable clerical work or excessive time. Lastly, employer objected to the request for $334.65 in expenses. Thereafter, claimant's counsel filed a response memorandum to employer's objections, and additionally submitted a supplemental fee

[7]Ms. Favaloro indicated that the courier position involved the lifting of less than 20 pounds. 2d EX-J, p.6.

petition, in which counsel deleted his previous request for expenses of $334.65 and requested an additional fee in the amount of $227.50, for itemized services by Attorney Demarest performed from July 23, 2001 through August 27, 2001, which were not included in his original fee request. In all other respects, counsel's supplemental fee petition is identical to the original petition filed with the Board.

As an initial matter, employer's general objection to its liability for a fee is rejected. As claimant has successfully defended his award on appeal, his attorneys are entitled to a fee reasonably commensurate with the work performed before the Board. *See Mikell v. Savannah Shipyard Co.,* 24 BRBS 100 (1990), *aff'd on recon.*, 26 BRBS 32 (1992), *aff'd mem. sub nom. Argonaut Ins. Co. v. Mikell,* 14 F.3d 58 (11th Cir. 1994); *Downey v. General Dynamics Corp.*, 22 BRBS 203 (1989); 33 U.S.C. §928; 20 C.F.R. §802.203. Moreover, after reviewing counsel's fee petitions, we disagree that the petitions are inadequate. With the exception of certain entries discussed hereafter, counsel's fee petitions contain sufficient information to satisfy the regulatory requirements set forth at 20 C.F.R. §§702.132 and 802.203. *See generally Forlong v. American Security & Trust Co.,* 21 BRBS 155 (1988). We further reject employer's objection to the hourly rates sought by claimant's attorneys. We consider the $175 and $150 hourly rates requested by counsel to be reasonable and commensurate with the rates the Board has previously awarded in the geographic area in which this case arises for similarly complex cases. *See Hargrove v. Strachan Shipping Co.*, 32 BRBS 224 (1998), *aff'g on recon.* 32 BRBS 11 (1998); *Smith v. Alter Barge Line, Inc.*, 30 BRBS 87 (1996).

Employer next objects to the charges itemized in Entry Nos. 5 and 6, involving the organization of exhibits and pleadings. *See* Clt's Fee Petition at 1. We agree that this work appears to be clerical in nature; as time spent on traditional clerical duties by an attorney is not compensable, we disallow the 1.3 hours itemized in Entry Nos. 5 and 6. *See Quintana v. Crescent Wharf & Whse. Co.*, 18 BRBS 254 (1986); *Staffile v. International Terminal Operating Co., Inc.*, 12 BRBS 895 (1980).

Employer also challenges, as excessive, the time sought for the preparation of claimant's response brief.[8] Specifically, employer first challenges the amount of time

[8]In addition, employer challenges the 1.2 hours claimed for reviewing the administrative law judge's February 2, 2001 Decision and Order. *See* Clt's Fee Petition, Entry No. 12. We consider the 1.2 hours itemized on this date a reasonable amount of time spent in the necessary task of reviewing the Decision and Order in order to prepare claimant's response brief.

itemized for review of the file and for preparation of the Statement of Facts and Statement

of the Case.[9] We consider the 4.3 hours itemized in Entry Nos. 13 through 22 involving review of the file to be reasonable, and therefore approve these entries. We agree with employer, however, that the 8.8 hours itemized in Entry Nos. 23 through 27 and 33 for preparation of the Statement of Facts and Statement of the Case are excessive, and reduce the time itemized in these entries to 6.8 hours. Employer next challenges, as excessive, the 9.6 hours itemized in Entry Nos. 30 through 32, 34 through 40, and 43 for preparation of the argument regarding choice of physician presented in claimant's response brief. In view of the complicated set of facts and the complexity of the legal issues with respect to counsel's choice of physician argument, we do not agree that the 9.6 hours spent by counsel in preparing this argument is excessive. We do agree with employer, however, that the 4.7 hours itemized in Entry Nos. 49, 50 and 53 for review and proofreading of claimant's response brief is excessive, and reduce the time for that activity to 2.7 hours. Lastly, we disallow Entry Nos. 55 through 59, representing 1.05 hours, which involve correspondence related to claimant's attempts to secure payment for claimant's past medical treatment, as well as a request for an informal conference with the district director. These services are not related to the proceedings before the Board, and counsel should seek approval for this legal work from the district director. *See* 33 U.S.C. §§918, 928(c); *Lewis v. Todd Pacific Shipyards Corp.*, 30 BRBS 154, 160 (1996). Consequently, we approve a fee of $5,231.25, representing .75 hour at a rate of $175 per hour and 34 hours at a rate of $150 per hour, payable by employer.

[9]In this regard, we disallow the 1.8 hours itemized in Entry Nos. 8, 9, 10, 28 and 29, related to preparation of a motion to strike exhibit. As such motion was not filed with the Board, and as counsel has not demonstrated why performance of this work was viewed as necessary to a successful defense of employer's appeal, these entries are disallowed. We further disallow the .5 hour itemized in Entry 11 because the nature of that work is not adequately described. *See* 20 C.F.R. §§702.132, 802.203.

Accordingly, the Decision and Order and the Decision and Order on Section 22 Modification of the administrative law judge are affirmed. Claimant's attorneys are awarded a fee of $5,231.25 for work performed before the Board to be paid directly to counsel by employer.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge