



BRB No. 15-0148
Case No. 2010-LHC-01263
OWCP No. 07-185692

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|---------------------------|---|-----------------------------------|
| JOSEPH MEEKS |) | |
| |) | |
| Claimant-Respondent |) | |
| |) | |
| v. |) | |
| |) | |
| BIS SALAMIS, INCORPORATED |) | DATE ISSUED: <u>Feb. 12, 2015</u> |
| |) | |
| and |) | |
| |) | |
| SIGNAL MUTUAL INDEMNITY |) | |
| ASSOCIATION |) | |
| |) | |
| Employer/Carrier- |) | |
| Petitioners |) | ORDER |

HALL, Acting Chief Administrative Appeals Judge:

The Board acknowledges receipt of employer’s timely Notice of Appeal of the administrative law judge’s Decision and Order on Second Remand filed February 2, 2015. 33 U.S.C. §921(a); 20 C.F.R. §802.205. Employer’s appeal is assigned the Board’s docket number, BRB No. 15-0148. All correspondence relating to this appeal must bear this number.

Employer has filed a Motion to Stay the enforcement of the administrative law judge’s Decision and Order on Second Remand. In support of its motion, employer states that it will suffer irreparable harm due to its inability to recoup any benefits paid to claimant should it succeed on appeal. No response to the motion has been filed.

In order to obtain a stay of payment pursuant to Section 21(b)(3), employer must establish that it will suffer “irreparable injury” if it has to satisfy the award of benefits. 33 U.S.C. §921(b)(3); 20 C.F.R. §802.105(a). It is insufficient to allege that benefits cannot be recouped if they were erroneously paid. *Rivere v. Offshore Paining Contractors*, 872 F.2d 1187, 22 BRBS 52(CRT) (5th Cir. 1989). Rather, “irreparable injury is demonstrated ‘only when the compensation award may be too heavy for the employer [or insurer] to pay without practically taking all its property or rendering him incapable of carrying on his business, or . . . by reason of age, sickness, or

other circumstances [of the payer], a condition is created which would amount to irreparable injury.” *Id.*, 872 F.2d at 1191, 22 BRBS at 56(CRT) (quoting *Continental Casualty Co. v. Lawson*, 2 F.Supp. 459, 461 (S.D. Fla. 1932), *rev'd on other grounds*, 64 F.2d 802 (5th Cir. 1933)); *see also Maxon Marine, Inc. v. Director, OWCP [Ahl]*, 63 F.3d 605, 29 BRBS 109(CRT) (7th Cir. 1995); *Meehan Seaway Service, Inc. v. Director, OWCP*, 4 F.3d 633, 27 BRBS 108(CRT) (8th Cir. 1993); *Edwards v. Director, OWCP*, 932 F.2d 1325, 24 BRBS 146(CRT) (9th Cir. 1991). Employer’s Motion for Stay fails to establish that it will suffer irreparable injury under this standard. Accordingly, the Board denies the Motion for Stay. 33 U.S.C. §921(b)(3); 20 C.F.R. §802.105.

Employer notes that, concurrent with its appeal in this case, it filed a notice of appeal of the Board’s prior decision, *Meeks v. Bis Salamis, Inc.*, BRB No. 13-0478 (July 28, 2014) (Boggs, J., dissenting), with the United States Court of Appeals for the Fifth Circuit.¹ It is clear from employer’s pleadings that its contentions of error concern the Board’s prior decision, and not the administrative law judge’s Decision and Order on Second Remand. The Board’s disposition of the prior issues in this case constitutes the “law of the case” and will not be revisited. *See, e.g., Boone v. Newport News Shipbuilding & Dry Dock Co.*, 37 BRBS 1 (2003). The only issue on which the Board remanded the case was claimant’s average weekly wage. The administrative law judge found claimant’s average weekly wage to be \$866.92, a figure to which the parties agreed. As employer does not contest this finding, and, in order to perfect employer’s appeal to the Fifth Circuit, we summarily affirm the administrative law judge’s Decision and Order on Second Remand. 33 U.S.C. §921(c); *Tideland Welding Service v. Director, OWCP*, 817 F.2d 1211, 20 BRBS 9(CRT) (5th Cir. 1987); *see also RMK-BRJ v. Brittain*, 832 F.2d 565, 20 BRBS 38(CRT) (11th Cir. 1987); 20 C.F.R. §802.410.

¹ This appeal has been assigned the docket number 15-60085.

Accordingly, the administrative law judge's Decision and Order on Second Remand is affirmed.

SO ORDERED.

BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

I concur:

REGINA C. McGRANERY
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge, concurring:

For the reasons stated in my dissenting opinion in the Board's prior decision, I believe that the Board should have remanded this case for a second time to permit the administrative law judge to make the necessary findings of fact consistent with applicable law. However, given the procedural posture of the case, I concur in the decision to affirm the administrative law judge's Decision and Order on Second Remand, so that employer may pursue its appeal at the Fifth Circuit. I also concur in the decision to deny the stay of payment as employer did not demonstrate that irreparable harm will ensue if it has to satisfy the award of benefits.

JUDITH S. BOGGS
Administrative Appeals Judge