



BRB No. 14-0005

DON K. WILSON)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
HUNTINGTON INGALLS,)	DATE ISSUED: <u>Jan. 28, 2015</u>
INCORPORATED-PASCAGOULA)	
OPERATIONS)	
)	
Self-Insured)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	ORDER on MOTION for
Respondent)	RECONSIDERATION

Employer has filed a timely motion for reconsideration of the Board's Decision and Order in the captioned case, *Wilson v. Huntington Ingalls, Inc.-Pascagoula Operations*, BRB No. 14-0005 (Aug. 19, 2014). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Claimant responds, opposing the motion.

In its Motion for Reconsideration, employer contends that the Board erred in remanding this case for the administrative law judge to address claimant's contention that he is entitled to total disability benefits subsequent to July 30, 1996, the date on which he underwent surgery on his right shoulder. Specifically, employer avers that it presented evidence sufficient to establish that claimant failed to meet his burden of establishing his entitlement to such benefits, with the exception of the period of July 30, 1996 through February 28, 1997, to which the parties stipulated. Thus, employer asserts that remanding the case to the administrative law judge is unnecessary, and that the Board should affirm the administrative law judge's decision, with the amendment that claimant is entitled to temporary total disability benefits for the period of July 30, 1996 through February 28, 1997.

The arguments raised by employer in its motion for reconsideration were addressed by the Board in its initial Decision and Order. Specifically, the Board held that the administrative law judge failed to address fully the issue raised by claimant, that is whether claimant demonstrated a change in his physical or economic condition after the

date of the initial award on July 31, 1996. *See* 33 U.S.C. §922. In the initial proceedings in this case, the parties stipulated that claimant was permanently partially disabled as of July 31, 1996, the date on which the administrative law judge's initial decision was issued.¹ Claimant alleged that, following his shoulder surgery on July 30, 1996, he has been totally disabled. Although the parties stipulated in the modification proceeding that claimant is entitled to temporary total disability benefits from July 30, 1996, through February 28, 1997, *see* EXS 11, 14; JX 1, the administrative law judge did not address all relevant evidence regarding claimant's claim that he remained totally disabled after February 28, 1997, when his shoulder condition reached maximum medical improvement following surgery. *Wilson*, slip op. at 4-5. Consequently, employer has not demonstrated error in the Board's decision to remand this case for further findings of fact.

Accordingly, employer's motion for reconsideration is denied. 20 C.F.R. §802.409. The Board's decision is affirmed.

SO ORDERED.

BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS²
Administrative Appeals Judge

¹ The initial hearing was held on April 18, 1995.

² Due to the retirement of Administrative Appeals Judge Roy P. Smith, Administrative Appeals Judge Boggs is substituted on this panel. 20 C.F.R. §802.407(a).