



BRB No. 19-0358

DAVID H. WILLIAMS)

Claimant)

v.)

AEGIS DEFENSE SERVICES, L.L.C.)

and)

INSURANCE COMPANY OF THE STATE)
OF PENNSYLVANIA)

Employer/Carrier-)
Petitioners)

AEGIS DEFENSE SERVICES, L.L.C.)

and)

ALLIED WORLD NATIONAL)
ASSURANCE COMPANY)

Employer/Carrier-)
Respondents)

DATE ISSUED: 01/17/2020

DECISION and ORDER

Appeal of the Decision and Order Granting Employer Aegis/Allied's Motion for Summary Decision to Dismiss Allied as the Responsible Insurance Carrier of Dana Rosen, Administrative Law Judge, United States Department of Labor.

Michael Marmer (Samuelson, Gonzalez, Valenzuela & Brown, LLP), Long Beach, California, for Aegis/Insurance Company of the State of Pennsylvania.

Daniel J. Louis (Flicker, Garelick & Associates, LLP), New York, New York, for Aegis/Allied World National Assurance Company.

Before: BUZZARD, ROLFE and GRESH, Administrative Appeals Judges.

PER CURIAM:

The Insurance Company of the State of Pennsylvania (ICSP) appeals the Decision and Order granting Allied World National Insurance Company's (Allied) motion to be dismissed as a responsible insurance carrier (2018-LDA-00970, 2018-LDA-00971, 2018-LDA-00972) of Administrative Law Judge Dana Rosen rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (the Act). We must affirm the administrative law judge's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant, an Army National Guardsman and a former Miami police officer, worked security-based jobs in Afghanistan for DynCorp from 2007 until April 2014, and for Aegis from January 2015 until December 22, 2015.¹ He filed claims for psychological injuries against both DynCorp and Aegis, identifying April 29, 2014, December 15, 2015, and December 22, 2015, as the dates of injury.

Allied, the carrier for Aegis during the one-year period commencing August 18, 2014, moved for summary decision, asserting it was not the insurer on the risk for claimant's dates of injury. It argued no evidence establishes claimant's work caused his psychological injuries during its coverage period or shows claimant was not exposed to injurious stimuli during ICSP's later coverage period. Therefore, no genuine issues of material fact exist regarding its liability. Claimant opposed, arguing a question remains as to whether work during Allied's coverage period caused or aggravated his psychological condition. ICSP also opposed, asserting a question of fact as to whether Allied is the responsible carrier.

The administrative law judge acknowledged claimant's opposition in her decision, but did not address his arguments. Decision and Order at 2-3. Instead, she concluded there is no dispute the dates of injury on claimant's claim forms are not within Allied's coverage

¹ In June 2015, he suffered a right inguinal hernia and received temporary total disability benefits until October 19, 2015, when he was released to return to regular duty. He returned to work for Aegis in November 2015 and worked until December 22, 2015.

dates so she dismissed Allied. *Id.* Both claimant and ICSP filed timely motions for reconsideration. See 20 C.F.R. §802.206(b)(1); see *Zumwalt v. National Steel & Shipbuilding Co.*, 52 BRBS 17 (2018), *aff'd mem.*, ___ F. App'x ___, No. 18-72257, 2019 WL 6999492 (9th Cir. Dec. 20, 2019). The administrative law judge did not address the motions.² ICSP appealed the Decision and Order on April 25, 2019, contending the administrative law judge issued a “premature” decision without considering its opposition to Allied’s Motion for Summary Decision or its motion for reconsideration. Allied responds, urging affirmance of its dismissal.

Section 802.206(f) of the Board’s regulations requires dismissal of an appeal as premature when a timely motion for reconsideration has been filed with the administrative law judge. 20 C.F.R. §802.206(f). A timely motion is filed within 10 days of the date the district director files the administrative law judge’s decision. 20 C.F.R. §802.206(b)(1); see *Zumwalt*, 50 BRBS at 20-21. Both claimant and ICSP filed motions for reconsideration within six days of the decision’s filing. Accordingly, we must dismiss ICSP’s interlocutory appeal because the administrative law judge has not ruled on the motions. *Aetna Casualty & Surety Co. v. Director, OWCP*, 97 F.3d 815, 30 BRBS 81(CRT) (5th Cir. 1996). We also vacate the administrative law judge’s Order Granting Continuance, which remanded the case to the district director, and we remand the case to the administrative law judge to address the pending motions for reconsideration.³

² Subsequently, the administrative law judge issued an order entitled “Order Granting Employer’s Motion for Continuance Since Claimant Failed to Attend Independent Medical Evaluation” and subtitled “Order Remanding to the District Director Since Claimant Cannot be Located” dated April 15, 2019. This Order does not address the parties’ motions for reconsideration.

³ We note the administrative law judge granted Allied’s motion for summary decision before considering the opposition briefs. Allied filed its motion for summary decision on March 18, 2019. The regulation at 29 C.F.R. §18.33(d) gives a respondent 14 days after service to respond to a motion. The administrative law judge’s decision is dated 10 days after Allied filed its motion, March 28, 2019, but it was not filed and served by the district director until April 4, 2019. Claimant filed his opposition brief on March 26, 2019 and ICSP filed its opposition brief on April 4, 2019.

Accordingly, we dismiss ICSP's premature appeal. 20 C.F.R. §802.206(f). We vacate the administrative law judge's Order remanding the case to the district director and we remand the case for her to address the pending motions for reconsideration of her Decision and Order granting Allied's motion for summary decision.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge