

DENNIS M. BALL)	
)	
Claimant-Respondent)	
)	
v.)	
)	
TACOMA BOATBUILDING COMPANY)	DATE ISSUED:
)	
and)	
)	
PACIFIC MARINE INSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT)	
OF LABOR)	
)	
Petitioner)	DECISION and ORDER

Appeal of the Decision and Order and Order Denying Motion for Reconsideration of Alexander Karst, Administrative Law Judge, United States Department of Labor.

LuAnn Kressley (J. Davitt McAteer, Acting Solicitor of Labor; Carol DeDeo, Associate Solicitor; Janet R. Dunlop, Counsel for Longshore), for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director), appeals the Decision and Order and Order Denying Motion for Reconsideration (89-LHC-3646) of Administrative Law Judge Alexander Karst 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 which are rational, supported by substantial evidence, and in accordance with law. *O'Keefe v.*

Smith, Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

On January 14, 1986, claimant, a pipefitter, sustained an injury to his right shoulder while working for employer. In his Decision and Order, the administrative law judge awarded claimant temporary total disability benefits from January 14, 1986, through January 1, 1989, permanent partial disability benefits after January 1, 1989, and any and all outstanding and future medical bills reasonably and causally related to claimant's industrial injury. The administrative law judge summarily denied the Director's Motion for Reconsideration. On appeal, the Director challenges the administrative law judge's award of temporary total disability benefits through January 1, 1989.¹ Neither claimant nor employer has responded to this appeal.

The Director contends that the administrative law judge erred in awarding claimant temporary total disability benefits through January 1, 1989, as the parties stipulated that claimant had reached maximum medical improvement by December 1, 1987, and as employer met its burden of establishing suitable alternate employment by December 1987. We agree with the Director's contentions. The parties stipulated at the formal hearing that claimant reached maximum medical improvement on December 1, 1987, and the administrative law judge accepted this stipulation in his decision. Tr. at 6; 8-9; Decision and Order at 6. As the date maximum medical improvement is reached separates temporary disability from permanent disability, the administrative law judge erred in awarding claimant temporary disability benefits after December 1, 1987. *Stevens v. Director, OWCP*, 909 F.2d 1256, 23 BRBS 89 (CRT)(9th Cir. 1990), *rev'g Stevens v. Lockheed Shipbuilding Co.*, 22 BRBS 155 (1989), *cert. denied*, 498 U.S. 1073 (1991); *Price v. Dravo Corp.*, 20 BRBS 94 (1987). We, therefore, vacate the administrative law judge's award of temporary disability benefits through January 1, 1989, and hold that claimant is entitled to permanent disability benefits from December 1, 1987.

The administrative law judge also awarded total disability benefits through January 1, 1989, after finding that employer established suitable alternate employment through its labor market survey and/or claimant's employment as a real estate agent by December 1987. Decision and Order at 2-3, 6; Employer's Exhibits 6, 7; Tr. at 20, 43. Since total disability becomes partial when suitable alternate employment is established, the administrative law judge should have awarded total disability benefits only until December 1987, when he found suitable alternate employment established. *Stevens*, 909 F.2d at 1256, 23 BRBS at 89 (CRT); *Rinaldi v. General Dynamics Corp.*, 25 BRBS 128 (1991)(decision on reconsideration). Consequently, we vacate the administrative law judge's award of total disability benefits through January 1, 1989. We hold that claimant is entitled to temporary total disability benefits until December 1, 1987, and to permanent partial disability benefits thereafter.

Accordingly, the administrative law judge's Decision and Order and Order Denying Motion for Reconsideration are vacated insofar as they order temporary total disability benefits to be paid through January 1, 1989. We modify the administrative law judge's award to reflect that claimant is

¹The Director, as administrator of the Special Fund, is liable for payment of all benefits under Section 18(b) of the Act, 33 U.S.C. §918(b), due to the insolvency of both employer and its carrier in this case. Director's brief at 2; Decision and Order at 2, 4; Tr. at 5-7.

entitled to temporary total disability benefits until December 1, 1987, with permanent partial disability benefits to be paid thereafter. In all other respects, the administrative law judge's Decision and Order is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge