

VICTOR J. SULLIVAN)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
NEWPORT NEWS SHIPBUILDING)	DATE ISSUED:
AND DRY DOCK COMPANY)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order On Remand of Bernard J. Gilday, Jr., Administrative Law Judge, United States Department of Labor.

Robert E. Walsh (Rutter & Montagna), Norfolk, Virginia, for claimant.

James M. Mesnard (Seyfarth, Shaw, Fairweather & Geraldson), Washington, D.C., for self-insured employer.

Before: SMITH, DOLDER, and MCGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order On Remand (88-LHC-673) of Administrative Law Judge Bernard J. Gilday, 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 the 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).

Claimant injured his left shoulder during the course of his employment on December 11, 1982. On February 28, 1986, based upon stipulations submitted by the parties, the district director entered a Compensation Order which awarded claimant temporary disability compensation for various periods, and permanent partial disability for a 5 percent loss of use of the upper left extremity under Section 8(c)(1) and (19) of the Act, 33 U.S.C. §908(c)(1), (19). Claimant subsequently sought modification of the district director's Compensation Order under Section 22 of the Act, 33 U.S.C. §922, asserting a mistake in the parties' agreement in that claimant received permanent partial disability compensation for his shoulder injury under the schedule, rather than under Section 8(c)(21) of the Act, 33 U.S.C. §908(c)(21), the appropriate subsection for such non-scheduled injuries.

In his initial Decision and Order, the administrative law judge determined that as the district director's Compensation Order based upon the stipulations of the parties was the "functional equivalent" of a Section 8(i), 33 U.S.C. §908(i), settlement, it was not subject to modification. On appeal, the Board reversed the administrative law judge's finding in this regard and held that as the district director's Compensation Order was an award based upon the agreements and stipulations of the parties, it was subject to modification. While employer also argued that the administrative law judge's error in viewing the district director's Compensation Order as a Section 8(i) settlement was harmless because claimant was seeking modification based on a change in law, the Board rejected this argument and held that the question of the appropriate subsection under which compensation is to be awarded is a mixed question of law and fact. Accordingly, the Board remanded the case for the administrative law judge to determine if modification was warranted. *Sullivan v. Newport News Shipbuilding and Dry Dock Company*, BRB No. 88-3966 (September 18, 1991) (unpublished).

On remand, the administrative law judge denied modification, determining that while a mistake had, in fact, occurred in that the district director awarded claimant permanent partial disability compensation for his shoulder injury under the schedule rather than under Section 8(c)(21), the interests of justice would not be served by reopening the claim on modification, as employer's interests in finality outweighed the need for reopening. Claimant appeals the denial of modification, asserting that the interests of justice actually weighed in his favor and that employer would suffer no prejudice if modification were granted. Employer responds, urging affirmance of the administrative law judge's denial of modification.

After consideration of claimant's contentions, we affirm the administrative law judge's denial of modification in this case. In determining whether to grant modification, if the evidence is sufficient to so warrant, the administrative law judge must decide whether modification would render justice under the Act. *Duran v. Interport Maintenance Corp.*, 27 BRBS 8 (1993). In making determinations under Section 22, the administrative law judge is afforded broad discretion. See generally *O'Keefe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 256 (1971), *reh'g denied*, 404 U.S. 1053 (1972); *Dobson v. Todd Pacific Shipyards Corporation*, 21 BRBS 174 (1988). In the present case, after noting that the mistake in question had been initiated by claimant and his counsel's failure to accurately and precisely identify the location of claimant's injury, and had been perpetuated by claimant's failure to take action to correct the mistake for three years, the administrative law judge found that employer's interest in the finality of the Compensation Order was superior to claimant's interests in reopening the claim. Inasmuch as Section 22 is not intended to shield a party from its litigation mistakes, we affirm the administrative law judge's denial of modification.

on the facts presented as a proper exercise of his discretionary authority. *See generally General Dynamics Corp. v. Director, OWCP [Woodberry]*, 673 F.2d 23, 14 BRBS 636 (1st Cir. 1982); *McCord v. Cephas*, 523 F.2d 1377, 3 BRBS 371 (D.C. Cir. 1976).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge