

BRB No. 93-1310

BUDDY M. WARD)	
)	
Claimant-Respondent)	
)	
v.)	
)	
NORTHWEST MARINE,)	
INCORPORATED)	
)	
and)	
)	
LEGION INSURANCE COMPANY)	
)	
Employer/Carrier-)	
Respondents)	DATE ISSUED:
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT)	
OF LABOR)	
)	
Petitioner)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Thomas Schneider, Administrative Law Judge, United States Department of Labor.

David Hytowitz (Pozzi, Wilson & Atchison), Portland, Oregon, for claimant.

Dennis R. VavRosky and Patric J. Doherty (VavRosky, MacColl, Olson, Doherty and Miller, P.C.), Portland, Oregon, for employer/carrier.

Marianne Demetral Smith (J. Davitt McAteer, Acting Solicitor of Labor; Carol DeDeo, Associate Solicitor; Samuel J. Oshinsky, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

The Director, Office of Workers's Compensation Programs (the Director), appeals the Decision and Order Awarding Benefits (92-LHC-1328) of Administrative Law Judge Thomas Schneider 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant, who worked for employer as a marine mechanic, sought compensation and medical benefits under the Act for subclavian vein thrombosis which he alleged occurred as a result of a work-related injury. There was a dispute as to whether claimant's disability was caused by his employment, and employer did not voluntarily pay any benefits. After the case was referred to the Office of Administrative Law Judges, however, claimant and employer entered into various stipulations which resolved all outstanding issues in the case. In a Decision and Order dated March 9, 1993, the administrative law judge entered an award consistent with the parties' stipulations whereby claimant was to receive temporary total disability compensation at the rate of \$309.06 per week for the period January 17, 1991, through November 4, 1993, entitling him to more than \$42,000, and employer was to pay \$10,000 for claimant's attorney's fee, and to withhold \$6,972.72 from claimant's award of temporary total disability compensation to pay to claimant's attorney the remainder of his fee and costs. In addition, claimant was denied permanent disability benefits and medical benefits.

The Director appeals, contending that the administrative law judge's decision must be vacated because he failed to identify and explain the basis for his conclusions in violation of the Administrative Procedure Act., 5 U.S.C. §557, thereby precluding the Board from exercising its review authority under Section 21(b)(3) of the Act, 33 U.S.C. §921(b)(3). In the alternative, the Director argues that the administrative law judge's finding that claimant's right to temporary total disability benefits terminated on November 3, 1993 and his denial of medical benefits during the period of claimant's temporary total disability is not supported by substantial evidence and does not comply with applicable law. Employer responds, urging affirmance, noting that no substantial controversy exists between the actual parties having adverse legal interests.¹ Claimant also responds, agreeing with employer.

We have considered the Director's' arguments, but the administrative law judge's award

¹In its response brief, employer reiterates the argument previously raised in its motion to dismiss, *i.e.*, that pursuant to the decision of the United States Supreme Court in *Director, OWCP v. Newport News Shipbuilding & Dry Dock Co. [Harcum]* ___ U.S. ___, 115 S.Ct. 1278 (1995), the Director lacks standing to appeal the administrative law judge's decision in this case. By Order dated August 31, 1995, the Board denied employer's motion to dismiss and, addressing this argument, held that an appeal of an administrative law judge's decision to the Board is an appeal under 33 U.S.C. §921(b)(3), not 33 U.S.C. §921(c). Thus, the Director has standing as a party-in-interest. *See Ahl v. Maxon Marine, Inc.*, 29 BRBS 125 (1995) (Order); 20 C.F.R. §§802.201(a), 802.212,.

based upon the stipulations of the parties is affirmed. Inasmuch as it is within the administrative law judge's discretion to hold the parties bound to their stipulations, we reject the Director's arguments and affirm the award entered by the administrative law judge. *See generally Simonds v. Pittman Mechanical Contractors, Inc.*, 27 BRBS 120 (1993), *aff'd sub. nom. Pittman Mechanical Contractors, Inc. v. Director, OWCP*, 35 F.3d 122 (4th Cir. 1994); *Brown v. Maryland Shipbuilding & Drydock Co.*, 18 BRBS 104 (1986).

Accordingly, the Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge