

CAROLYN J. CHAUDRON)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	DATE ISSUED:
INCORPORATED)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Order Denying Motion for Summary Decision and Order of Remand and the Order on Motion for Reconsideration of Quentin P. McColgin, Administrative Law Judge, United States Department of Labor.

Paul M. Franke, Jr. (Franke, Rainey & Salloum), Gulfport, Mississippi, for self-insured employer.

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

PER CURIAM:

Employer appeals the Order Denying Motion for Summary Decision and Order of Remand and the Order on Motion for Reconsideration (88-LHC-2925) of Administrative Law Judge Quentin P. McColgin 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).

Claimant's claim for benefits under the Act was transferred to the Office of Administrative Law Judges for consideration of employer's motion to have claimant's claim barred by Section 33(g) of the Act, 33 U.S.C. §933(g), based on the holding in *Estate of Cowart v. Nicklos Drilling Co.*, 112 S.Ct. 2589, 26 BRBS 49 (CRT)(1992). Prior to the hearing, claimant filed a motion to withdraw her claim pursuant to 20 C.F.R. §702.225(a), averring that she settled several third-party claims without employer's approval. Employer responded, seeking dismissal of claimant's claim with prejudice.

In his Order Denying Motion for Summary Decision and Order of Remand the administrative law judge denied employer's motion to bar claimant's claim pursuant to Section 33(g).

The administrative law judge found that although claimant entered into third-party settlements without employer's prior approval, employer failed to allege and prove that claimant is a "person entitled to compensation" within the meaning of Section 33(g)(1). The administrative law judge remanded the case to the district director for consideration of claimant's motion to withdraw.

Employer filed a motion for reconsideration with the administrative law judge stating that its motion for summary judgment was unopposed and should have been granted. Alternatively, employer contended that the matter should have proceeded to a full evidentiary hearing. The administrative law judge denied the motion for reconsideration stating that employer's motion for summary judgment was denied because it was deficient, not because the allegations therein were refuted. The administrative law judge also stated that since the claim was referred to him solely for the consideration of employer's motion for summary judgment, it would have been premature to schedule the case for a hearing even if claimant had not filed a motion to withdraw her claim. The administrative law judge stated that the case would have been remanded for informal proceedings in the absence of claimant's motion.

Employer appeals the administrative law judge's orders.¹ Although employer appeals from an interlocutory order of remand, we will entertain this appeal in order to properly direct the course of the adjudicatory process in light of new case precedent. *See* discussion, *infra*; *Baroumes v. Eagle Marine Services*, 23 BRBS 80 (1989); *cf. Green v. Ingalls Shipbuilding, Inc.*, 29 BRBS 81 (1995) (refusing to entertain appeals of administrative law judge's denial of summary judgment when cases were remanded to the district director).

Initially, we reject employer's contention that the administrative law judge erred in denying its motion for summary judgment. The administrative law judge properly determined that the applicability of Section 33(g) was not apparent from the face of employer's motion. The sole fact that claimant entered into third-party settlements without employer's prior written approval is an insufficient basis on which to grant summary judgment. *Harris v. Todd Pacific Shipyards Corp.*, 30 BRBS 5 (1996)(Brown and McGranery, JJ., concurring and dissenting), *aff'g on recon. en banc*, 28 BRBS 254 (1994); *see also Ingalls Shipbuilding, Inc. v. Director, OWCP [Yates]*, 65 F.3d 460, 29 BRBS 113 (CRT), *pet. for reh'g denied*, 71 F.3d 880 (5th Cir. 1995), *pet. for cert. granted*, 64 U.S.L.W. 3762 (U.S. May 13, 1996)(No. 95-1081); *Bundens v. J.E. Brenneman Co.*, 46 F.3d 292, 29 BRBS 52 (CRT) (3d Cir. 1995); *Gladney v. Ingalls Shipbuilding, Inc.*, 30 BRBS 25 (1996) (McGranery, J., concurring); *Linton v. Container Stevedore Co.*, 28 BRBS 282 (1994).

We must vacate, however, the administrative law judge's order of remand. In its recent decision in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Boone]*, 81 F.3d 561 (5th Cir. 1996), the United States Court of Appeals for the Fifth Circuit held that motions to withdraw filed by claimants whose claims are covered by the mandamus order referenced in *Ingalls Shipbuilding, Inc. v. Asbestos Health Claimants*, 17 F.3d 130, 28 BRBS 12 (CRT) (5th Cir. 1994), must have the motion considered by an administrative law judge and not by the district director. *Cf. Downs v. Ingalls Shipbuilding, Inc.*, ___ BRBS ___, BRB No. 95-1682 (June 18, 1996)(holding administrative law

¹By letter dated December 21, 1994, counsel for claimant withdrew as her representative. She is now considered to be proceeding in a *pro se* capacity.

judge effectively ruled on motion to withdraw where he considered regulatory criteria and that remand to district director was for ministerial action). As this case falls within this group of cases, pursuant to *Boone* the administrative law judge, and not the district director, must rule on claimant's motion to withdraw. *Boone*, 81 F.3d at 566; *see also Hensen v. Arcwel Corp.*, 27 BRBS 212 (1993). We therefore vacate the administrative law judge's order of remand to the district director and we remand the case to the administrative law judge for consideration of claimant's motion to withdraw pursuant to the criteria of 20 C.F.R. §702.225.

Accordingly, the administrative law judge's denial of employer's motion for summary decision is affirmed. The administrative law judge's order of remand is vacated, and the case is remanded to the administrative law judge for further proceedings consistent with this decision.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge