

BRB Nos. 95-1876
and 95-1877

KENDALL L. RYALS)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING, INCORPORATED)	DATE ISSUED:
)	
and)	
)	
AMERICAN MUTUAL INSURANCE COMPANY (in liquidation by and through MISSISSIPPI INSURANCE GUARANTY ASSOCIATION)	
)	
Employer/Carrier- Petitioners)	DECISION and ORDER

Appeals of the Order of Lee J. Romero, Jr., Administrative Law Judge, United States Department of Labor, and the Compensation Order of Nancy L. Ricker, District Director, United States Department of Labor.

Paul M. Franke, Jr. (Franke, Rainey & Salloum), Gulfport, Mississippi, for the employer/carrier.

Before:

PER CURIAM:

Employer appeals the Order (94-LHC-2475) of Administrative Law Judge Lee J. Romero and the Compensation Order (Case No. 06-114750) of District Director Nancy L. Ricker 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).¹ We must affirm the administrative law judge's

¹By Order dated August 4, 1995, these appeals were consolidated for decision. 20 C.F.R. §802.104.

findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3). The district director's determinations will be affirmed unless shown to be arbitrary, capricious and an abuse of discretion, or not in accordance with law. *See Sans v. Todd Shipyards Corp.*, 19 BRBS 24 (1986).

Claimant's claim for benefits under the Act was transferred to the Office of Administrative Law Judges for a formal hearing. Prior to the hearing, claimant filed a motion to withdraw his claim pursuant to 20 C.F.R. §702.225(a) averring, *inter alia*, that he filed a claim for benefits against employer for pulmonary disease related to his employment, but that he subsequently determined that employer was not his last maritime employer. The administrative law judge stated that employer did not respond to claimant's motion to withdraw. The administrative law judge found that "claimant has complied with the regulatory criteria provided in 20 C.F.R. §702.225(a) to permit withdrawal of his claim without prejudice." Decision and Order at 2. He then remanded the case to the district director "for further appropriate action consistent with this order to permit claimant to withdraw his claim pursuant to 20 C.F.R. §702.225(a)." *Id.* Thereafter, the district director issued an order approving the withdrawal of the claim as being for a proper purpose and in claimant's best interest. Employer appeals the orders of both the administrative law judge and the district director.

We hold that the administrative law judge effectively ruled on claimant's motion to withdraw and we affirm the administrative law judge's granting of claimant's motion as it accords with law and constitutes a rational exercise of his discretion. In its recent decision in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Boone]*, 81 F.3d 561 (5th Cir. 1996), *vacating and remanding* 28 BRBS 119 (1994) (Decision and Order on Recon. *en banc*)(Brown, J., concurring), the United States Court of Appeals for the Fifth Circuit addressed the district director's authority to approve claimant Boone's motion to withdraw his claim following the district court's January 7, 1993, issuance of a writ of mandamus ordering the district director to transfer a group of claims to the Office of Administrative Law Judges for hearings.² On February 27, 1995, the district court issued a second order explaining the earlier order and concluding that while the mandamus order permitted claimants to move to withdraw claims, the Office of Administrative Law Judges, rather than the district director, was authorized to hear such motions. Based on this order, which was not appealed, the court held in *Boone* that the district director erred in considering claimants' motions to withdraw their claims. The court further found that employer was aggrieved by the district director's action because it lost the procedural right to have the motions to withdraw considered in an adjudicative forum. The court therefore vacated the district director's order allowing Boone to withdraw his claim without prejudice and remanded the case for further proceedings.

²By Order dated August 4, 1995, the Board granted employer's motion to hold the captioned case in abeyance pending a decision in *Boone*. In view of the issuance of the Fifth Circuit's decision, the abeyance is hereby lifted.

The instant case, however, was properly transferred to the Office of Administrative Law Judges and claimant's motion to withdraw was considered by the administrative law judge as intended by the district court. Employer's procedural rights, the denial of which aggrieved it in *Boone*, were fully protected by the administrative law judge's actions in this case. *Boone*, slip op. at

. Moreover, we conclude that the administrative law judge effectively granted claimant's motion to withdraw, notwithstanding the remand of the case to the district director which we view as for purely ministerial action. *See* 20 C.F.R. §702.349. The regulation at Section 702.225(a) provides that a claimant may withdraw his claim prior to the adjudication thereof if:

- (1) He files with the district director with whom the claim was filed a written request stating the reasons for withdrawal;
- (2) The claimant is alive at the time his request for withdrawal is filed;
- (3) The district director approves the request for withdrawal as being for a proper purpose and in the claimant's best interest; and
- (4) The request for withdrawal is filed on or before the date the OWCP makes a determination on the claim.

20 C.F.R. §702.225(a). After considering the declarations in claimant's motion and noting that the merits of the claim had not been adjudicated, the administrative law judge found that claimant complied with the regulatory criteria to permit withdrawal without prejudice.³ *See generally Henson v. Arcwel Corp.*, 27 BRBS 212 (1993); *Langley v. Kellers' Peoria Harbor Fleeting*, 27 BRBS 140 (1993) (Brown, J., concurring and dissenting). This finding is affirmed as within the scope of the

³Section 702.225(c) describes the effect of a withdrawal as follows:

Where a request for withdrawal of a claim is filed and such request for withdrawal is approved, such withdrawal shall be without prejudice to the filing of another claim, subject to the time limitation provisions of section 13 of the Act and of the regulations in this part.

20 C.F.R. §702.225(c).

district court's mandamus order and the administrative law judge's discretion. *Boone*, slip op. at ; *Ingalls Shipbuilding, Inc. v. Asbestos Health Claimants*, 17 F.3d 130, 135-136 n.14, 28 BRBS 12, 17 n.14 (CRT) (5th Cir. 1994) (noting that withdrawal "would be an unsurprising choice, particularly for those who suffer no current disability and thus only made protective filings"). The district director's subsequent order approving the withdrawal is vacated as null.

Accordingly, the administrative law judge's order granting claimant's motion to withdraw his claim is affirmed. BRB No. 95-1876. The district director's Compensation Order is vacated as null. BRB No. 95-1877.

SO ORDERED.
