

JEFFREY DETERMAN )  
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 Claimant-Respondent )  
 )  
 v. )  
 )  
 SAN JUAN CONSTRUCTION )  
 )  
 and )  
 )  
 ALASKA NATIONAL INSURANCE ) DATE ISSUED: 06/22/2005  
 COMPANY )  
 )  
 Employer/Carrier- )  
 Petitioners )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Respondent ) ORDER

Employer appeals the Approval of Rehabilitation Plan and Award (Case No. 14-140218) of District Director Karen P. Staats 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.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (the Act). The Director, Office of Workers' Compensation Programs (the Director), has filed a motion to remand this case to the district director. Employer states it does not object to the Director's motion. Claimant has not responded to the motion.

Claimant sustained a back and hernia injury on April 7, 2003, in the course of his employment on the island of Diego Garcia. On December 23, 2004, the district director sent to employer a "Notice of Proposed Vocational Rehabilitation Plan" (the Plan). Attached to the notice was a report from a vocational counselor justifying the need for the Plan. The district director provided employer 14 days to "submit documents, reports, or comments" supporting or opposing the proposed plan. On January 6, 2005, employer sent a letter to the district director stating it was investigating the claim and was not yet sure whether it ultimately would oppose the Plan. Employer stated that claimant was to

see its physician, Dr. Fitzgerald, on January 7, and that claimant's deposition was scheduled for January 18. Based on current information, however, employer objected to the Plan as it had offered claimant a job in Colorado, the state in which claimant resided.

On January 11, 2005, the district director approved the Plan for claimant to attend a community college for two years to obtain an Associates Degree in Applied Science of Construction. She rejected employer's contention that the job offer negated the appropriateness of the Plan, as the job was 150 miles from claimant's home. Employer filed a timely motion for reconsideration, on the grounds that claimant did not need retraining, as he already had the skills necessary to perform the work of an electrical estimator, and that given claimant's history of working all over the world, the job employer offered was suitable and available. The district director denied employer's motion for reconsideration.

On appeal, employer contends, *inter alia*, that the district director abused her discretion in approving the Plan, as there is no evidence that claimant is permanently disabled. As support for this contention, employer attached to its appellate brief Dr. Fitzgerald's report. The Director contends that as the Board does not have the authority to review this report, because it was not part of the district director's decision-making process, the case should be remanded for the district director to consider the propriety of the Plan in light of Dr. Fitzgerald's opinion. *See generally* 20 C.F.R. §802.301(b).

We grant the Director's motion to remand, as he is the representative of the district director. *See* 33 U.S.C. §939(c); 20 C.F.R. §702.407; 20 C.F.R. §§702.501 *et seq.* Section 39(c)(2) of the Act states, "The Secretary shall direct the vocational rehabilitation of permanently disabled employees. . . ." The regulations implementing Section 39(c) state: "The objective of vocational rehabilitation is the return of permanently disabled persons to gainful employment . . . ." 20 C.F.R. §702.501, and that "[a]ll injury cases which are likely to result in, or have resulted in, permanent disability," shall promptly be referred to a vocational rehabilitation adviser on the staff of the district director. 20 C.F.R. §702.502. Employer contends, by reference to Dr. Fitzgerald's opinion, that claimant is not permanently disabled.

In view of the fact that the district director had not reviewed this opinion when she approved the rehabilitation plan and the Director's opinion that remand is necessary, we remand this case to the district director to reconsider the Plan in light of Dr. Fitzgerald's opinion and all other relevant documents. *See generally General Constr. Co. v. Castro*, 401 F.3d 963, 39 BRBS 13(CRT) (9<sup>th</sup> Cir. 2005), *aff'g* 37 BRBS 65 (2003); *Meinert v. Fraser, Inc.*, 37 BRBS 164 (2003).

Accordingly, the Director's motion to remand is granted. Employer's appeal is dismissed and the case is remanded to the district director for consideration consistent with this decision.<sup>1</sup>

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge

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<sup>1</sup> Employer's motion for an enlargement of time in which to file its reply brief is moot.