

BRB No. 07-0111

S.B.)
)
 Claimant-Respondent)
)
 v.)
)
 LOWRY AIR FORCE BASE MORALE,) DATE ISSUED: 06/27/2007
 WELFARE AND RECREATION FUND)
)
 and)
)
 AIR FORCE INSURANCE FUND)
)
 Employer/Carrier-)
 Petitioners) DECISION and ORDER

Appeal of the Supplementary Compensation Order of Karen P. Staats,
District Director, United States Department of Labor.

Timothy Quinn, Denver, Colorado, for claimant.

Roy H. Leonard (Air Force Services Agency, Office of Legal Counsel), San
Antonio, Texas, for employer/carrier.

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

PER CURIAM:

Employer appeals the Supplementary Compensation Order (Case No. 14-097398)
of District Director Karen P. Staats 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., as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *et*
seq. (the Act). The determinations of the district director must be affirmed unless they
are shown to be arbitrary, capricious, an abuse of discretion, or not in accordance with
law. *Sans v. Todd Shipyard Corp.*, 19 BRBS 24 (1986).

Claimant was working as a gardener/groundskeeper at employer's golf course in 1991, and he injured his right knee and leg during the course of his employment. Employer paid medical expenses and temporary total disability benefits. When claimant's condition reached maximum medical improvement in 1994, employer paid him permanent partial disability benefits for a 51 percent impairment to his lower right extremity. Nevertheless, there remained a dispute over whether employer owed additional temporary disability benefits and whether employer was liable for surgery that was performed in 2000, psychological care, penalties, interest, and an attorney's fee and expenses. The parties agreed to resolve the disputed compensation and medical benefits issues for a lump sum payment of \$17,377 with an additional \$15,000 to be paid to claimant's attorney. *Id.* The administrative law judge approved the settlement, and his decision was filed by the district director on May 18, 2006. Employer paid claimant on May 31, 2006. On August 30, 2006, the district director issued a Supplementary Compensation Order finding employer liable for a Section 14(f), 33 U.S.C. §914(f), assessment in the amount of \$3,475.40. Employer paid the assessment on September 7, 2006, and then it filed an appeal with the Board challenging its liability for this penalty.¹ Claimant responds, urging affirmance of the district director's order.

Employer contends the district director erred in imposing a Section 14(f) assessment against it. First, employer argues that the settlement agreement resolved the dispute over medical benefits, and medical benefits are not subject to a Section 14(f) assessment. Employer also argues that the district director made it impossible for employer to comply with the 10-day requirement in Section 14(f); therefore, it should not have to pay an additional assessment.

Section 14(f) states that if an employer does not pay compensation within 10 days after it becomes due, then the employer is liable for an additional 20 percent of the amount due. 33 U.S.C. §914(f); *Lauzon v. Strachan Shipping Co.*, 782 F.2d 1217, 18 BRBS 60(CRT) (5th Cir. 1985). Equitable consideration cannot excuse an employer's late payment, *Hanson v. Marine Terminals Corp.*, 307 F.3d 1139, 36 BRBS 63(CRT) (9th Cir. 2002); *Sea-Land Service, Inc. v. Barry*, 41 F.3d 903, 29 BRBS 1(CRT) (3^d Cir. 1994); *Lauzon*, 782 F.2d 1217, 18 BRBS 60(CRT); *Zea v. West State, Inc.*, 61 F.Supp. 1144 (D.Or. 1999); *Matthews v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 440 (1989), although one court of appeals has reserved judgment on this issue should there be an allegation of fraud or physical impossibility, *Hanson*, 307 F.3d 1139, 36 BRBS 63(CRT).

¹Thus, the Board has jurisdiction over this appeal. *See, e.g., Sea-Land Service, Inc. v. Barry*, 41 F.3d 903, 29 BRBS 1(CRT) (3^d Cir. 1994); *Irwin v. Navy Resale Exchange*, 29 BRBS 77 (1995).

We reject employer's contention that Section 14(f) cannot apply in this case because the settlement included medical benefits, and Section 14(f) only applies to "compensation," citing *Caudill v. Sea Tac Alaska Shipbuilding*, 22 BRBS 10 (1988), *aff'd mem. sub nom. Sea Tac Alaska Shipbuilding v. Director, OWCP*, 8 F.3d 29 (9th Cir. 1993).² The settlement agreement here clearly stated that the lump sum payment was "for all personally incurred medical expenses in contention up to the date of this settlement agreement *and* all disability compensation in dispute . . ." Emp. Brief at Exh. 2 p.5 (emphasis added). The parties' agreement did not allocate any particular amount between medical expenses or disability benefits but was for a lump sum liquidated amount covering both types of liability.³ *Caudill*, therefore, is distinguishable because employer's payment was not solely for medical benefits. Contrary to employer's assertion, it cannot avoid liability for the Section 14(f) assessment on the ground that the settlement agreement was restricted to medical expenses.

Employer next argues that the Department of Labor made it physically impossible for it to pay claimant within the allotted time frame. Specifically, employer argues that the district director filed the decision on May 18, 2006. Employer's mailroom received a copy of the filed Decision and Order on May 26, 2006, the Friday before Memorial Day weekend, making it impossible to pay claimant by Sunday, May 28, in light of the

²In *Caudill*, the Board stated that medical benefits, which are not generally paid to the employee, are not "compensation" that can be time-barred or held subject to interest or to a Section 14(e), 33 U.S.C. §914(e), assessment; therefore, the Board similarly held that medical benefits are not subject to a Section 14(f) assessment. *Caudill*, 22 BRBS at 16; *c.f. Sproull v. Director, OWCP*, 86 F.3d 895, 30 BRBS 49(CRT) (9th Cir. 1996), *cert. denied*, 520 U.S. 1155 (1997) (late payment of interest, which is inherent component of "compensation," is subject to Section 14(f) assessment); *Hunt v. Director, OWCP*, 999 F.2d 419, 27 BRBS 84(CRT) (9th Cir. 1993) (interest may be assessed on overdue medical expenses whether they are paid to the provider or the employee); *Lazarus v. Chevron USA, Inc.*, 958 F.2d 1297, 25 BRBS 145(CRT) (5th Cir. 1992) (medical benefits are considered "compensation" for enforcement proceedings under 33 U.S.C. §918(a)).

³The administrative law judge's decision approving the settlement stated only that "the case involves a claim for benefits[,] that the agreement is approved, and that the "parties are ordered to carry out the terms of their agreement forthwith." Emp. Brief at Exh. 3. In her order assessing the penalty, the district director appears to have mistakenly stated: "On May 18, 2006 a Decision and Order Approving Settlement was filed in the above entitled case awarding *compensation for medical benefits* based upon a Stipulation and Application for Settlement. . . ." Supp. Comp. Order at 1 (emphasis added).

geographic distance between the parties⁴ and of the fact that government offices were closed⁵ and a person with authority to act on the order did not receive the order until after the holiday weekend when payment was already late. We reject employer's argument. Though employer's payment was late through no fault of its own, the district director has no discretion to consider equitable excuses in determining whether to impose a Section 14(f) assessment. *Hanson*, 307 F.3d 1139, 36 BRBS 63(CRT); *Barry*, 41 F.3d 903, 29 BRBS 1(CRT); *Lauzon*, 782 F.2d 1217, 18 BRBS 60(CRT). Therefore, employer cannot avoid payment of the Section 14(f) assessment on this ground, and we affirm the district director's imposition of a Section 14(f) assessment.

Accordingly, the district director's Supplementary Compensation Order is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

⁴The district director's office is located in Seattle, Washington, the claimant is in Aurora, Colorado, his attorney is in Denver, Colorado, and employer's representative is in San Antonio, Texas.

⁵Employer, an Air Force Base fund, is a government agency.