

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



BRB No. 19-0239
Case No. 2014-LHC-00489
OWCP No. 07-198105

JAMES SCOTTY BOUDREAUX)

Claimant-Respondent)

v.)

OWENSBY & KRITIKOS,)
INCORPORATED)

and)

LOUISIANA WORKERS')
COMPENSATION CORPORATION)

Employer/Carrier-)
Petitioners)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

Respondent)

DATE ISSUED: 06/27/2019

ORDER

Employer appeals the Decision and Order on Remand (2014-LHC-00489) of Administrative Law Judge Clement J. Kennington rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.*, as extended by the Outer Continental Shelf Lands Act, 43 U.S.C. §1331 *et seq.* (the OCSLA). Employer has filed a Motion for Summary Affirmance of the decision on remand. Claimant has not responded to employer's motion, but in his response to employer's petition for review urges affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, consents to the

issuance of a summary decision affirming the administrative law judge's decision on remand.

This case is before the Board for the third time. In its first decision, the Board affirmed the administrative law judge's conclusion that claimant's claim is within the coverage of the OCSLA pursuant to *Pacific Operators Offshore, LLP v. Valladolid*, 565 U.S. 207, 45 BRBS 87(CRT) (2012). *Boudreaux v. Owensby & Kritikos, Inc.*, 49 BRBS 83 (2015). The case was remanded for consideration of any remaining issues. *Id.* In his Decision and Order on Remand dated January 11, 2017, the administrative law judge adopted the parties' stipulations as his "Findings of Fact."¹ In his "Order," the administrative law judge ordered employer to carry out "authorizations and actions" in accordance with the stipulations.

In its second decision, the Board held the administrative law judge's Decision and Order on Remand was not in accordance with law because it did not set forth a specific award of benefits to claimant. *Boudreaux v. Owensby & Kritikos, Inc.* [*Boudreaux II*], BRB Nos. 17-0256/A (July 6, 2017) (unpub.); see 33 U.S.C. §919(c); *Mitri v. Global Linguist Solutions*, 48 BRBS 41 (2014); 20 C.F.R. §702.348. The Board, therefore, remanded the case to the administrative law judge "for any necessary proceedings and for the entry of a specific award of benefits." *Boudreaux II*, slip op. at 5.

In his Decision and Order on Remand dated January 25, 2019, the administrative law judge awarded claimant ongoing permanent total disability benefits from May 1, 2018, and medical benefits.² On appeal, employer does not challenge these findings. Rather, it seeks to have the administrative law judge's Decision and Order on Remand summarily affirmed so that it may appeal the Board's first decision to the United States Court of Appeals for the Fifth Circuit. See 33 U.S.C. §921(c); 20 C.F.R. §802.410. Thus, as

¹On September 16, 2016, employer's counsel informed the administrative law judge that the parties stipulated to claimant's average weekly wage, the amount of past due benefits owed claimant, the amount due claimant with regard to his disfigurement claim, and that no other issues related to compensation or medical benefits were presently in dispute.

²The administrative law judge also noted the parties' stipulations that claimant was entitled to and employer has paid benefits for periods of temporary total and temporary partial disability from the date of injury through May 1, 2018, the date claimant's work-related injuries reached maximum medical improvement. 33 U.S.C. §908(b), (e). In addition, the parties stipulated that claimant is entitled to and employer has paid benefits for disfigurement. 33 U.S.C. §908(c)(20).

employer raises no issues with regard to the administrative law judge's award of benefits on remand, and as the Board's previous decisions on the issues raised constitute the law of the case, *see, e.g., Irby v. Blackwater Security Consulting*, 44 BRBS 17 (2010); *Boone v. Newport News Shipbuilding & Dry Dock Co.*, 37 BRBS 1 (2003), we grant employer's motion for summary decision. 20 C.F.R. §802.303(b).

Accordingly, employer's Motion for Summary Affirmance is granted, and the administrative law judge's Decision and Order on Remand awarding benefits is affirmed.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge