

T. H.)
)
 Claimant-Respondent)
)
 v.)
)
 MAERSK CONTAINER SERVICES) DATE ISSUED: 03/27/2007
)
 and)
)
 SIGNAL MUTUAL INDEMNITY)
 ASSOCIATION, LTD)
)
 Employer/Carrier-)
 Petitioners)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) ORDER

Employer appeals the Compensation Order Section 7 (Case No. 13-104053) of District Director R. Todd Bruininks 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 will affirm the determinations of the district director unless they are shown by the challenging party to be arbitrary, capricious, an abuse of discretion or not in accordance with law. *See Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant was injured at work in May 2006. Employer controverted the claim. The district director held an informal conference in July 2006, at which time claimant requested medical treatment, physical therapy, and temporary total disability benefits. Employer agreed to authorize an MRI, but disagreed that claimant was disabled. Claimant was examined by Dr. Blackwell, who prescribed physical therapy. The district director recommended that employer pay temporary total disability and medical benefits, including physical therapy.

After the conference, employer controverted the claim again, contending claimant is not entitled to disability or medical benefits. Nonetheless, the district director issued a Compensation Order ordering employer to pay for Dr. Blackwell's services and for physical therapy. The district director stated that employer did not present any medical reports that claimant is not in need of medical treatment for his work injuries. The district director relied on as his authority Section 7(b) of the Act, 33 U.S.C. §907(b), and Section 702.407 of the regulations, 20 C.F.R. §702.407.¹

Employer appeals the district director's order, contending that the district director exceeded his authority because factual disputes are at issue concerning claimant's entitlement to medical benefits. Claimant responds, urging affirmance as the district director's action in ordering payment of medical benefits is within his discretion. The Director, Office of Workers' Compensation Programs, has filed a motion to vacate and remand, "conceding" that the district director erred in issuing a compensation order in this case because issues of fact are involved. The Director states that upon remand to the district director, the case should be transmitted to the Office of Administrative Law Judges (OALJ).

¹ Section 7(b) states, in pertinent part,

The Secretary shall actively supervise the medical care rendered to injured employees, shall require periodic reports as to the medical care being rendered to injured employees, shall have authority to determine the necessity, character, and sufficiency of any medical aid furnished or to be furnished,

33 U.S.C. §907(b). The regulation states in pertinent part,

The Director, OWCP, through the district directors and their designees, shall actively supervise the medical care of an injured employee covered by the Act. Such supervision shall include:

* * *

(d) The further evaluation of medical questions arising in any case under the Act, with respect to the nature and extent of the covered injury, and the medical care required therefor.

20 C.F.R. §702.407(a).

We grant the Director's motion to vacate and remand. Although the authority vested by Section 7(b) to supervise medical care rests with the delegate of the Secretary, the district director, *see, e.g., Jackson v. Universal Maritime Service Corp.*, 31 BRBS 103 (1997) (Brown, J., concurring) (district director can order change in treating physician), the administrative law judge retains the role as factfinder when disputed issues of fact concerning medical benefits arise. *See, e.g., Lynch v. Newport News Shipbuilding & Dry Dock Co.*, 39 BRBS 29 (2005); *Weikert v. Universal Maritime Service Corp.*, 36 BRBS 38 (2002); *Sanders v. Marine Terminals Corp.*, 31 BRBS 19 (1997) (Brown, J., concurring); *Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989). In *Sanders*, 31 BRBS 19, the Board held that the administrative law judge, and not the district director, has the authority to decide the issue of the necessity of housekeeping services as a consequence of claimant's work-related injury. The Board held, "A claim for medical benefits that raises disputed factual issues such as the need for specific care or treatment for a work-related injury must be referred to an administrative law judge for resolution of the disputed factual issues" *Id.* at 23.

In this case, there was no agreement between the parties at the conclusion of the informal conference. *See* 20 C.F.R. §§702.315, 702.316. Moreover, as questions of fact were raised by employer, including, *inter alia*, which body parts were injured in the accident and whether medical care is necessary for the treatment of claimant's injuries, the administrative law judge, and not the district director, must resolve the issues in accordance with the Act's formal adjudication procedures. 33 U.S.C. §919(d); 20 C.F.R. §702.331 *et seq.* Thus, we vacate the district director's compensation order awarding medical benefits. The case is remanded to the district director, who should refer the case to the OALJ. 20 C.F.R. §§702.316, 702.317.

Claimant's counsel has filed a fee petition for work performed before the Board in this appeal. As the disposition of the appeal was not favorable to claimant, the fee petition is denied at this time. *See* 20 C.F.R. §802.203(c).

Accordingly, we grant the Director's motion. The district director's compensation order awarding medical benefits is vacated. The case is remanded to the district director for referral to the OALJ. Claimant's request for an attorney's fee is denied.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge