

LAWRENCE E. CRAWFORD)
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Claimant-Respondent)
)
v.) DATE ISSUED:
)
STEVEDORING SERVICES OF AMERICA)
)
and)
)
EAGLE PACIFIC INSURANCE COMPANY)
)
Employer/Carrier-)
Petitioners) DECISION and ORDER

Appeal of the Supplemental Decision and Order of Daniel L. Stewart, Administrative Law Judge, United States Department of Labor.

Charles Robinowitz, Portland, Oregon, for claimant.

John Dudrey (Williams Fredrickson, LLC), Portland, Oregon, for employer/carrier.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Supplemental Decision and Order (93-LHC-3285) of Administrative Law Judge Daniel L. Stewart 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 must affirm the findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant suffered a work-related injury to his left knee on January 4, 1991, when he fell through the walkway of a ship while working for employer as a button pusher operating a wood chip blower. Claimant sought permanent total disability benefits under the Act, and employer the claim. After the case was transferred to the Office of Administrative Law Judges (OALJ), the parties stipulated that claimant suffered a 33 percent impairment to his left leg, and Administrative Law Judge Mapes issued an award of benefits based on this stipulation on May 26, 1994. In addition the parties agreed to reopen the claim as of March 19, 1994, as claimant's condition had worsened.¹

On November 7, 1994, employer signed a Form LS-33 approving claimant's third-party settlement against the vessel aboard which claimant was injured on January 4, 1991. Under the terms of the agreement, claimant received a gross payment of \$315,000, from which employer received \$130,00 in reimbursement of its lien for compensation benefits and medical payments. Claimant received a net payment of \$85,000, from which employer received an additional credit of \$13,737.05 for temporary total disability benefits due to claimant from October 15, 1994 to March 7, 1995 and \$55 for medical expenses. Thus, the remaining net amount of payments received in the third-party settlement by claimant which was not credited to employer is \$71,909.38

On May 20, 1996, in a Decision and Order Denying Benefits, Administrative Law

¹Claimant underwent a total knee replacement in April 1994 and retired from longshore work on March 1, 1995.

Judge Stewart (the administrative law judge) awarded claimant 100.8 weeks of permanent partial disability benefits based on the stipulation that claimant's knee condition had reached maximum medical improvement on March 7, 1995, with a 35 percent impairment. The administrative law judge found that claimant was capable of returning to his former job without restrictions and was not totally disabled under the Act.

Claimant appealed this decision to the Board. The Board vacated the administrative law judge's finding that claimant could return to his former employment and remanded the case to the administrative law judge for further consideration. *Crawford v. Stevedoring Services of America*, BRB No. 96-1241 (April 28, 1997). On remand, the administrative law judge found that claimant was permanently totally disabled from March 7, 1995, as employer failed to establish the availability of suitable alternate employment. With regard to applying any credit owed to employer, the administrative law judge stated:

Employer is entitled to credits for all compensation payments voluntarily made to claimant and the net third-party recovery, pursuant to 33 U.S.C. §§914(j), 33(f).

Decision and Order on Remand Awarding Benefits at 45.

Subsequent to the issuance of the administrative law judge's decision, a dispute arose over the meaning of the administrative law judge's statement that employer is entitled to a "credit for all compensation payments." Thus, on August 19, 1998, the district director transmitted the case to the OALJ for resolution of the parties' dispute regarding this issue. The parties agreed that an evidentiary hearing was not required and that this matter could be disposed based on the record.

In his Supplemental Decision and Order, the administrative law judge found that he had jurisdiction to review his March 24, 1998 decision on remand pursuant to Section 18(a), 33 U.S.C. §918(a), for the limited purpose of clarifying the means for calculating the compensation due. In addition, the administrative law judge found that employer is not entitled to a credit pursuant to Section 14(j), 33 U.S.C. §914(j), for the permanent partial disability benefits paid for an earlier period of disability against the permanent total disability benefits currently due.

Employer contends on appeal that the administrative law judge improperly found that he has jurisdiction in this case pursuant to Section 18(a) and that the administrative law judge improperly denied it a credit pursuant to Section 14(j). Claimant responds, urging affirmance of the administrative law judge's decision.

Initially, employer contends that the administrative law judge erred in finding that he had jurisdiction in the present case based on Section 18(a) of the Act. We disagree. Section 18(a) provides that if an employer fails to pay compensation, claimant may request that the district director issue a supplemental order declaring the amount due. Then, claimant may take a certified copy of the district director's supplemental order to a U.S. District Court for enforcement. Section 18(a) states that a hearing may be held on the issue, as provided for by Section 19 of the Act, 33 U.S.C. §919. Pursuant to the 1972 Amendments, the adjudicatory power to conduct hearings was transferred from the deputy commissioners to the administrative law judges. See 33 U.S.C. §919(d); *O'Berry v. Jacksonville Shipyards, Inc.*, 21 BRBS 355 (1988), *aff'd and modified on recon.*, 22 BRBS 430 (1989). In addition, the

regulation accompanying Section 18(a), 20 C.F.R. §702.371, provides that when a district director receives an application for a supplemental default order, he shall institute proceedings as if the claim were an original claim, and may, if appropriate transfer the case to the administrative law judge. The United States Court of Appeals for the Fifth Circuit, in reviewing facts similar to the present case, stated that the most common Section 18(a) proceeding is based on employer's failure to pay benefits where a compensation order clearly provides for them. *Bray v. Director, OWCP*, 664 F.2d 1045, 14 BRBS 341 (5th Cir. 1981). It further stated however, that an unusual case may arise where a compensation order is "ambiguous or unclear, or uncertainty arises in its application, which was not reasonably apparent at the time of the entry of the order." The court held that it is appropriate to use Section 18(a) to answer such a question which emerges during the period of payment. *Bray*, 664 F.2d at 1047, 14 BRBS at 343.

As the parties in the present case disputed the meaning of the term "compensation paid" referenced in the administrative law judge's Decision and Order on Remand, the district director was unable to implement the order and thus properly transferred the case to the administrative law judge for resolution, 20 C.F.R. §§702.316, 702.371, as the parties did not agree on a disposition while the case was before the district director. See *Maine v. Brady-Hamilton Stevedore Co*, 18 BRBS 129 (1986). We reject employer's contention that the administrative law judge did not properly use Section 18(a) as he did not "clarify" his decision, but instead changed it by disallowing employer a credit for compensation paid for the

earlier period of permanent partial disability. The administrative law judge “clarified” his previous decision by specifically finding that the vague term “compensation” referred only to any compensation paid for the current period of disability. Thus, we affirm the administrative law judge’s finding that he had the jurisdiction, pursuant to Section 18(a), to review the language of his decision and order on remand in order to address the ambiguity that arose after the decision was issued.² See *Bray*, 664 F.2d at 1047, 14 BRBS at 343.

²We accept employer’s Submission of Supplemental Case Authority, but reject employer’s contention that the holding in *Healy Tibbitts Builders, Inc. v. Cabral*, ___ F.3d ___, ___ BRBS ___(CRT), No. 98-70552 (9th Cir. Feb. 2, 2000), compels a different outcome in this case. Contrary to employer’s contention, the issue in dispute was not a “purely legal issue,” but, rather, was a dispute over the meaning of the administrative law judge’s phrase “all compensation payments.” As discussed *infra*, Section 18(a) is the appropriate section to use when a dispute arises over an uncertainty in the application of a Decision and Order. The claim is to be treated as an original claim, and thus can be transferred to the administrative law judge for clarification. 20 C.F.R. §702.371.

We also reject employer's contention that the administrative law judge erred in denying it a credit for compensation paid to claimant under the schedule for the injury to his left knee. Section 14(j) provides employer a credit for its advance payments of compensation against any compensation subsequently found due. 33 U.S.C. §914(j). This credit is for advance compensation paid toward the claimed disability, which in the present case is a claim for permanent total disability resulting from an aggravation of claimant's prior injury. Claimant received a payment of \$63,446.70, based on the stipulated 33 percent impairment of his left leg, representing 95.04 weeks of compensation at the rate of \$667.79. This period of partial disability would have ended prior to February 1994. See 33 U.S.C. §908(c)(2). The payments of compensation made by employer pursuant to the Order of May 26, 1994 were due solely to the scheduled permanent partial disability and cannot rationally be deemed as "advance" payments of compensation for the period of permanent total disability which had yet to occur.³ Thus, we affirm the administrative law judge's finding that employer is not entitled to credit the compensation paid for the scheduled permanent partial disability against the compensation due for the continuing permanent total disability ordered in the

³Subsequently, claimant claimed a new period of disability when his symptoms continued, he underwent a new operation, and could not return to his former duties. See generally *Wilson v. Matson Terminals, Inc.*, 21 BRBS 105 (1988).

decision dated March 24, 1998, as the disabilities are for differing periods.⁴ See generally *Vinson v. Newport News Shipbuilding & Dry Dock Co.*, 27 BRBS 220 (1993).

⁴We reject employer's contention that the holding in *Tibbetts v. Bath Iron Works Corp.*, 10 BRBS 245 (1979) compels a different outcome in this case, as this case relates to the treatment of concurrent permanent partial disability benefits under the schedule and Section 8(c)(21) of the Act, 33 U.S.C. §908(c)(21).

Accordingly, the Supplemental Decision and Order of the administrative law judge is affirmed in all respects.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge