

BRB Nos. 00-0818
and 00-0865

WILLIAM PARKER)
)
 Claimant-Respondent)
)
 v.)
)
BATON ROUGE MARINE) DATE ISSUED:
CONTRACTORS)
)
 and)
)
LOUISIANA INSURANCE)
GUARANTY ASSOCIATION)
)
 Employer/Carrier-)
 Petitioners) DECISION and ORDER

Appeals of the Decision and Order on Remand Awarding Benefits of James W. Kerr, Jr., Administrative Law Judge, United States Department of Labor, and the Interest Computation Printout of Charles Lee, District Director, Office of Workers' Compensation Programs, United States Department of Labor.

John F. Dillon (John F. Dillon, PLC), New Orleans, Louisiana, for claimant.

B. Ralph Bailey (Law Office of B. Ralph Bailey), Mandeville, Louisiana, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order on Remand Awarding Benefits (97-LHC-2812) of Administrative Law Judge James W. Kerr, Jr., and the Interest Computation Printout (No. 07-140239) of District Director Charles Lee, 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 if they are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3). This case is before the Board for a second time.

Claimant was exposed to asbestos in connection with his work as a longshoreman for several employers at the Port of Baton Rouge, Louisiana,¹ and was diagnosed with pulmonary asbestosis by Dr. Gomes on November 21, 1997. Claimant, whose employment at that facility spanned from the early 1950s until his retirement in 1976, stated that his last exposure to asbestos occurred while he was working for employer, Baton Rouge Marine Contractors (BRM). Claimant therefore listed BRM as the responsible employer upon filing his claim for benefits.

In his initial decision, the administrative law judge found that claimant's notice and claim were timely filed pursuant to Sections 12 and 13 of the Act, 33 U.S.C. §§912, 913, and that BRM, as the employer at the time of claimant's last injurious exposure, is the responsible employer. He then determined that claimant is entitled to permanent total disability benefits commencing May 12, 1998, as well as to medical benefits pursuant to Section 7, 33 U.S.C. §907, as a result of his occupational pulmonary asbestosis.

Employer appealed to the Board, challenging the administrative law judge's findings that it is the responsible employer and, alternatively, that claimant is entitled to reimbursement of medical expenses. Claimant filed a cross-appeal, contesting the administrative law judge's finding regarding the date of the commencement of benefits.

In its decision, the Board initially affirmed the administrative law judge's findings that BRM is the responsible employer, and that claimant is entitled to an award of medical benefits. *Parker v. Baton Rouge Marine Contractors*, BRB Nos. 99-0410/A (Jan. 11, 2000)(unpub.). The Board then vacated the administrative law judge's finding of May 8, 1998, as the commencement date for benefits, based on his application of an improper standard in discussing that issue and as the record contains evidence that claimant may have had a permanent respiratory impairment as a result of his occupational disease prior to that date. The Board also vacated the award of permanent total disability benefits, holding that

¹Claimant testified that during his longshore employment at the Port of Baton Rouge he worked for Rogers Terminals, Southeastern Stevedoring, Louisiana Stevedores and Ramsay-Scarlett, in addition to his work for employer, Baton Rouge Marine Contractors.

claimant's status as a voluntary retiree limits him to a permanent partial disability award based on the degree of his pulmonary impairment. *See* 33 U.S.C. §908(c)(23). Accordingly, the case was remanded for further consideration regarding the commencement date of benefits and the degree of claimant's pulmonary impairment.

On remand, the administrative law judge determined that Dr. Gomes's report dated May 8, 1998, represented the first time that claimant received an impairment rating for his occupational asbestosis. In addition, the administrative law judge found, based on Dr. Gomes's credible finding of a Class IV impairment, that claimant is 100 percent disabled. Accordingly, the administrative law judge concluded that claimant is entitled to an award of permanent partial disability benefits from May 8, 1998, based on his 100 percent respiratory impairment. The administrative law judge also ordered employer to pay claimant interest on any unpaid compensation benefits. The district director thereafter calculated the amount of interest owed by employer to claimant, a total of \$1,761.42, based on the amount of claimant's unpaid benefits from May 8, 1998, to May 11, 2000, \$29,245.65 (105 weeks at a compensation rate of \$278.53), at an interest rate of 6.2 percent.

On appeal, employer again challenges the administrative law judge's findings that it is the responsible employer, and that claimant is entitled to reimbursement of medical expenses.² In addition, employer challenges the validity of the district director's Interest Computation Printout. Claimant responds, urging affirmance.

Employer initially acknowledges that it is again raising the same contentions regarding the administrative law judge's findings on the issues of responsible employer and claimant's entitlement to medical benefits as it did in its prior appeal in this case. In the Board's prior decision, those contentions were rejected, and the administrative law judge's finding that BRM is the responsible employer was affirmed. As to claimant's entitlement to medical benefits, the Board affirmed the administrative law judge's award, as he rationally found that the medical treatment in question is causally related to, reasonable for and necessary to treat claimant's occupational disease. *Parker*, slip op. at 3-4. As employer has not alleged any reason why the law of the case doctrine should not apply, we decline to

²Employer filed separate appeals of the administrative law judge's Decision and Order on Remand and the district director's Interest Computation Printout. The Board respectively assigned these appeals BRB Nos. 00-0818 and 00-0865, and consolidated them by order dated June 8, 2000.

address employer's contentions on these issues as they were fully discussed in the Board's first decision. *See generally Alexander v. Triple A Machine Shop*, 34 BRBS 34 (2000).

Employer also argues that the district director's Interest Computation Printout does not constitute an award as contemplated by Section 19 of the Act, 33 U.S.C. §919, as no hearing was held as to employer's liability for interest, no evidence was offered, and employer was not served with this document by registered or certified mail. Additionally, employer asserts that by virtue of the administrative law judge's original decision, it overpaid compensation because of adjustments in accordance with Section 10(f) of the Act, 33 U.S.C. §910(f), and thus any amount allegedly due claimant as interest was presumably already recovered in lieu of the overpayment.

To the extent that employer may be challenging the administrative law judge's award of interest on unpaid benefits, its argument is without merit. While there are no provisions in the Act requiring payment of interest on unpaid installments of compensation past due, the courts have held that unless interest is awarded on delayed payments, the claimant does not receive the full amount of compensation due. *See generally Quave v. Progress Marine*, 918 F.2d 33, 24 BRBS 43(CRT), *on rehearing*, 921 F.2d 213, 24 BRBS 55(CRT) (5th Cir. 1990), *cert. denied*, 111 S.Ct. 2012 (1991); *Quick v. Martin*, 397 F.2d 1225 (5th Cir. 1971); *Strachan Shipping Co. v. Wedemeyer*, 452 F.2d 1225 (5th Cir. 1971). In the instant case, the administrative law judge determined that claimant was entitled to benefits from May 8, 1998, and that employer "shall pay to claimant interest on any unpaid compensation benefits." Decision and Order on Remand at 4. Moreover, the administrative law judge properly observed that 28 U.S.C. §1961 (1982), is applicable to determine the proper rate of interest to be applied to installments of past due compensation rate.³ *Grant v. Portland Stevedoring Co.*, 16 BRBS 267 (1984), *aff'd on recon.*, 17 BRBS 20 (1985). The administrative law judge's general award of interest, to be calculated pursuant to the applicable rate set out by 28 U.S.C. §1961, is therefore affirmed. Moreover, we note that to the extent that employer

³28 U.S.C. §1961 provides that "interest shall be calculated from the date of the entry of the judgment, at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment."

argues that it should be entitled to recoup this amount by offsetting any payment of interest to claimant against payments of compensation, it does so erroneously, as awards of interest are not compensation under the Act, and thus, cannot be offset against compensation payments. *Castronova v. General Dynamics Corp.*, 20 BRBS 139 (1987).

Employer is, however, correct in noting that the district director's Interest Computation Printout does not constitute a compensation award. Absent an agreement by the parties or a request for an order under Section 702.315, 20 C.F.R. §702.315, the district director is not empowered to issue a compensation order. *Roulst v. Marco Constr. Co.*, 15 BRBS 443 (1983). The district director's Interest Computation Printout is not a result of either of these requisites. Rather, it is the next logical step in the claims administration process following the issuance of an award of benefits by the administrative law judge, *i.e.*, in this case calculating the interest due from employer in accordance with the administrative law judge's decision.

In performing this requisite calculation, the district director was acting in his role as a claims administrator. In particular, the determination of the amount of interest due is a ministerial calculation because the rate is set by law. *See* 28 U.S.C. §1961; *Beth-Energy Mines, Inc. v. Director, OWCP*, 32 F.3d 843, 18 BLR 2-351 (3d Cir. 1994). The district director herein merely applied the administrative law judge's findings to first calculate the benefits owed to claimant by employer and then determine the interest owed on that outstanding compensation. The district director's action in this case therefore is not subject to review by the Board as it does not involve review of a discretionary act, or a strictly legal issue. *See Healy Tibbitts Builders, Inc. v. Cabral*, 201 F.3d 1090, 33 BRBS 209(CRT)(9th Cir. 2000), *cert. denied*, 121 S.Ct. 378 (2000); *Brown v. Marine Terminals Corp.*, 30 BRBS 29 (1996)(*en banc*)(Brown and McGranery, JJ., concurring and dissenting); *Tupper v. Teledyne Movable Offshore*, 13 BRBS 614 (1981); *Longergan v. Ira S. Bushey & Sons, Inc.*, 11 BRBS 345 (1979); *Mazzella v. United Terminals, Inc.*, 8 BRBS 755, *aff'd on recon.*, 9 BRBS 191 (1978).

In *Williams v. Halter Marine Service, Inc.*, 19 BRBS 248 (1987), the employer argued that pursuant to the administrative law judge's decision, there was an overpayment of benefits to claimant, and therefore, it requested the Board to specify the manner by which employer is entitled to recoup its previous overpayments, in that case from the Special Fund. The Board held that this issue is better presented to the district director, who had already rendered a determination of the amounts paid and owed by employer. The Board specifically stated that those issues pertaining to employer's overpayment of compensation may be resolved through informal proceedings at the district director level. The Board therefore declined to address employer's contentions at that time. In light of *Williams*, we similarly hold that any issues pertaining to the district director's calculation of interest must first be presented to the district director. We thus decline to address employer's contentions and

instruct employer that it should attempt to resolve any issues over the amount of benefits due under the administrative law judge's award by informal means at the district director level. If a factual dispute remains following its pursuit of an informal resolution, employer may thereafter request a hearing before the Office of Administrative Law Judges. *See* 33 U.S.C. §919(d); *See Cabral*, 201 F.3d 1090, 33 BRBS 209(CRT).

Accordingly, the administrative law judge's Decision and Order on Remand Awarding Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge