

C.C.)
)
 Claimant-Respondent)
)
 v.)
)
 TRINITY YACHTS) DATE ISSUED: 05/14/2008
)
 and)
)
 RELIANCE NATIONAL INDEMNITY)
 COMPANY c/o LOUISIANA INSURANCE)
 GUARANTY ASSOCIATION)
)
 Employer/Carrier-)
 Petitioners) ORDER

Employer appeals the Decision and Order and Order Denying Request for Rehearing (2006-LHC-1981) of Administrative Law Judge Clement J. Kennington 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). Claimant has filed a motion to dismiss employer's appeal on the grounds that its Petition for Review and brief to the Board were untimely filed and that the issues raised by employer have been addressed by the United States District Court during the proceedings claimant brought to enforce the award of benefits. Employer has not responded to claimant's motion to dismiss.

Claimant and employer settled claimant's claim for benefits pursuant to Section 8(i), 33 U.S.C. §908(i), for \$30,000. The district director approved this settlement and filed an order awarding benefits on February 27, 2006. Employer paid the benefits on March 20, 2006. Claimant sought a Section 14(f) assessment, 33 U.S.C. §914(f), due to employer's late payment of benefits.¹ In his decision, the administrative law judge found

¹ Section 14(f) of the Act states:

If any compensation, payable under the terms of an award, is not paid within ten days after it becomes due, there shall be added to such unpaid compensation an amount equal to 20 per centum thereof, which shall be

claimant entitled to an additional 20 percent assessment of \$6,000 pursuant to Section 14(f) as employer did not timely pay the compensation benefits awarded. The administrative law judge rejected employer's contention that Louisiana Insurance Guaranty Association (LIGA) cannot be held liable for this assessment pursuant to state law as the Act preempts any conflicting law. The administrative law judge also rejected employer's contention that proper mailing of the compensation order was not effected. The administrative law judge denied employer's subsequent motion for reconsideration.

We grant claimant's motion to dismiss employer's appeal.² The Board lacks jurisdiction over an order imposing a Section 14(f) assessment in cases where employer has not paid the assessment. *Tidelands Marine Serv. v. Patterson*, 719 F.2d 126, 16 BRBS 10(CRT) (5th Cir. 1983); *see also Snowden v. Director, OWCP*, 253 F.3d 725, 35 BRBS 81(CRT) (D.C. Cir. 2001); *Sea-Land Serv., Inc. v. Barry*, 41 F.3d 903, 29 BRBS 1(CRT) (3^d Cir. 1994); *Providence Washington Ins. Co. v. Director, OWCP*, 765 F.2d 1381, 17 BRBS 135(CRT) (9th Cir. 1985). In this case, by virtue of the proceedings in federal district court, it is apparent that employer did not pay the Section 14(f) assessment awarded by the administrative law judge. Therefore, we dismiss employer's appeal for lack of jurisdiction. *Id.*

Moreover, we note that employer has had the opportunity for review of its substantive contentions concerning the procedural propriety of the Section 14(f) assessment. *See Abbott v. Louisiana Ins. Guar. Ass'n*, 889 F.2d 626, 23 BRBS 3(CRT) (5th Cir. 1989), *cert. denied*, 494 U.S. 1082 (1990). In a decision issued on October 22, 2007, the United States District Court for the Eastern District of Louisiana denied LIGA's motion to dismiss claimant's motion to enforce the award of benefits. *Carillo v. Reliance Nat. Indem. Co.*, No. 07-04060, 2007 WL 3125300 (E.D. La. Oct. 27, 2007). The court stated that LIGA "points to no language" in the Louisiana statute excluding its liability for post-insolvency costs and interest. The court also stated that "mailing" the compensation order is not part of the "filing" requirement of 20 C.F.R. §702.349, such that the time for paying the compensation due is tolled until proper mailing was effected.

paid at the same time as, but in addition to, such compensation, unless review of the compensation order making such award is had as provided in section 921 of this title and an order staying payment has been issued by the Board or court.

33 U.S.C. §914(f).

² The Board, however, has the discretion to accept employer's Petition for Review and brief, which were timely filed in response to the Board's Order to Show Cause dated February 26, 2008. 20 C.F.R. §§802.211, 802.218.

In a subsequent decision, the court held that claimant is entitled to judgment as a matter of law, and the court enforced the administrative law judge's award of the Section 14(f) assessment.³ *Carillo v. Reliance Nat. Indem. Co.*, No. 07-4060, 2008 WL 576273 (E.D. La. Feb. 29, 2008). Employer has appealed this decision to the United States Court of Appeals for the Fifth Circuit.

For these reasons, the Board is without jurisdiction over employer's appeal. Therefore, we grant claimant's motion to dismiss it.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

³ Interestingly, the district court stated that the administrative law judge's award had become final because LIGA did not "assert or present documentation that it has filed an appeal to the Benefits Review Board," *Carillo v. Reliance Nat. Indem. Co.*, No. 07-4060, 2008 WL 576273 at *2 (E.D. La. Feb. 29, 2008), even though this appeal was pending before the Board. Nonetheless, absent the grant of a stay of payments, employer must pay the compensation due even if an appeal is filed. *Providence Washington Ins. Co. v. Director, OWCP*, 765 F.2d 1381, 17 BRBS 135(CRT) (9th Cir. 1985).