

BRB No. 12-0533
OWCP No. 08-0069801

JOSE G. RAMON)
)
 Claimant-Petitioner)
)
 v.)
)
 TTT STEVEDORES) DATE ISSUED: 11/29/2012
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 and)
)
 MIDLAND INSURANCE COMPANY)
)
 Employer/Carrier-)
 Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS,)
 UNITED STATES DEPARTMENT)
 OF LABOR)
)
 Respondent) ORDER

Claimant, without the benefit of counsel, has filed a timely appeal of the Order of District Director David Widener. In response, the Director, Office of Workers' Compensation Programs (the Director), has filed a Motion to Dismiss and Remand the captioned claim, contending that claimant's appeal is not properly before the Board. Neither claimant nor employer has filed a response to the Director's motion.

To briefly summarize the procedural history of this case, claimant, in a Decision and Order dated December 1, 1989, was awarded permanent total disability benefits, payable by employer, commencing January 8, 1986, and continuing for 104 weeks, after which time the administrative law judge ordered the Special Fund to assume the payment of claimant's benefits pursuant to Section 8(f) of the Act, 33 U.S.C. §908(f).

On February 2, 2012, the Director ceased paying benefits to claimant and sought an order of forfeiture pursuant to Section 8(j) of the Act, 33 U.S.C. §908(j), and modification of the administrative law judge's award of benefits pursuant to Section 22 of the Act, 33 U.S.C. §922, contending that claimant had failed to report income which he earned subsequent to April 1, 2005. In an Order dated July 6, 2012, the district director found that claimant failed to report his earnings during the period of April 2005 through December 2010. Consequently, the district director found that claimant must forfeit compensation during the period that he did not report his income, and that the Special Fund is entitled to credit such forfeitures against its future payments of benefits to claimant. The district director also granted the Director's motion for modification, finding that, as claimant has a residual earning capacity, he is no longer totally disabled. Thus, the district director modified the award to one for permanent partial disability benefits.

We grant the Director's Motion to Dismiss and Remand as the Board lacks jurisdiction over this appeal. Section 8(j) of the Act and its implementing regulation, 20 C.F.R. §702.785, permit an employer or the Director in a case, as here, where the Special Fund is paying benefits to request a disabled claimant to report his post-injury earnings. The claimant's benefits are subject to forfeiture if claimant fails to submit a report or if earnings are knowingly omitted or understated on the report. *See* 33 U.S.C. §908(j); *Delaware River Stevedores v. DiFidelto*, 440 F.3d 615, 40 BRBS 5(CRT) (3^d Cir. 2006); *Hundley v. Newport News Shipbuilding & Dry Dock Co.*, 32 BRBS 254 (1998). Section 702.286(b), 20 C.F.R. §702.286(b), provides that forfeiture proceedings may be initiated by filing a charge with the district director, who shall then convene an informal conference and issue a decision on the merits.¹ If any party disagrees with the district director's decision, Section 702.286(b) states that the party should request a formal hearing before an administrative law judge. *See Floyd v. Penn Terminals, Inc.*, 37 BRBS 141 (2003). In this case, claimant appealed the district director's the order of forfeiture to the Board. As correctly argued by the Director, however, claimant's recourse in challenging the district director's order is to request a formal hearing before an administrative law judge. 20 C.F.R. §702.286(b); *Floyd*, 37 BRBS 141; *see Young v. Newport News Shipbuilding & Dry Dock Co.*, 45 BRBS 35 (2011).

Moreover, the district director is not authorized to modify the 1989 Decision and Order absent agreement of the parties. *See, e.g., Carter v. Merritt Ship Repair*, 19 BRBS 94 (1986); *Sans v. Todd Shipyards Corp.*, 19 BRBS 29 (1986); 20 C.F.R. §§702.315, 316. As claimant disagrees with the district director's attempt to modify the administrative law judge's decision, he must request that the case be transferred to an

¹In this case, the district director held a telephonic informal conference on April 17, 2012.

administrative law judge on this issue as well. Claimant may appeal the administrative law judge's Decision and Order to the Board within 30 days of the date it is filed by the district director. 33 U.S.C. §921; 20 C.F.R. §802.205.

Accordingly, the Director's motion is granted and claimant's appeal is dismissed. The case is remanded to the district director, with instructions to refer the case to the Office of Administrative Law Judges.² *See generally Ingalls Shipbuilding, Inc. v. Asbestos Health Claimants*, 17 F.3d 130, 28 BRBS 12(CRT) (5th Cir. 1994).

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

²Claimant first filed his appeal with the district director, who forwarded it to the Board. Thus, he has already expressed his dissatisfaction with the district director's order.