



BRB No. 18-0200

VICKIE C. BAXTER)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
CSA, LIMITED)	
)	
and)	DATE ISSUED: 10/30/2018
)	
INSURANCE COMPANY OF THE STATE)	
OF PENNSYLVANIA, c/o AIG CLAIMS,)	
INCORPORATED)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Order Granting Employer’s Motion to Cancel Hearing and Order of Remand of Dana Rosen, Administrative Law Judge, United States Department of Labor.

Howard S. Grossman and Scott L. Thaler (Grossman Attorneys at Law), Boca Raton, Florida, for claimant.

John F. Karpousis and William H. Yost (Freehill Hogan & Mahar, LLP), New York, New York, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BOGGS and BUZZARD, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Order Granting Employer’s Motion to Cancel Hearing and Order of Remand (2017-LDA-00510) of Administrative Law Judge Dana Rosen rendered

on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §901 *et seq.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *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. 33 U.S.C. §921(b)(3); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant, while working for employer as a warehouse supervisor in Kuwait, sustained injuries to her neck, back and knees as a result of three separate motor vehicle accidents on April 8, May 1, and May 20, 2010. Claimant also alleged she sustained a psychological injury as a result of her work for employer. Employer voluntarily paid claimant temporary total disability and medical benefits. However, a dispute arose when employer declined to pay for surgery on claimant's left knee, a third MRI of her back, and implantation of a dorsal spinal column stimulator.

In a Decision and Order dated May 28, 2015, the administrative law judge awarded claimant medical benefits for a third MRI of her back and medial patellofemoral reconstruction surgery on her left knee.¹ The administrative law judge, however, denied claimant's request for a dorsal spinal column stimulator. The Board affirmed the administrative law judge's decision. *See Baxter v. CSA, Ltd.*, BRB No. 15-0358 (Jan. 19, 2016) (unpub.). Employer complied by authorizing the left knee surgery, which was performed by Dr. Baker in June 2015, as well as two additional back MRIs.

Employer sent claimant for an evaluation with Dr. DeFillipis on August 3, 2016, who recommended that claimant see a licensed mental health professional able to provide trauma-based psychotherapy. Dr. DeFillipis opined that if claimant received this treatment, she should reach maximum medical improvement within four months. On March 22, 2017, employer scheduled claimant to attend a second evaluation with Dr. DeFillipis. Claimant objected because she had been assessed by Dr. DeFillipis on August 3, 2016. The parties thereafter sought formal adjudication of this issue and a hearing was scheduled for March 22, 2018.

Employer filed its LS-18 pre-hearing statement on March 23, 2017, followed by a notice of controversion on April 5, 2017. In both documents, employer declared it had suspended payment of compensation benefits as a result of claimant's refusals to comply

¹Based on the parties' stipulations, the administrative law judge also concluded: 1) claimant has been temporarily totally disabled from July 7, 2010 to the present; 2) employer has paid temporary total disability benefits from July 7, 2010 to the present; and 3) all medical benefits other than those "currently in dispute" have been paid.

with its requests to attend medical examinations and to complete medical authorization forms. *See* 33 U.S.C. §907(d)(4). Employer, thereafter, filed motions to compel claimant's compliance with its requests. Claimant countered by filing her LS-18 Pre-Hearing Statement on April 6, 2017, as well as a motion to order the reinstatement of benefits.

In an Order dated June 29, 2017, the administrative law judge denied employer's motions to compel, as well as claimant's cross-motion to reinstate payment of temporary total disability benefits.² Nevertheless, employer, on November 1, 2017, reinstated its payment of temporary total disability benefits, which included a lump sum payment covering the period benefits were suspended.

On November 9, 2017, claimant filed a motion to compel discovery, prompting employer, on December 4, 2017, to file a motion in opposition, which also included cross-motions for a protective order limiting discovery and for cancellation of the formal hearing as moot. Claimant filed a reply to employer's motion in opposition, as well as responses in opposition to employer's cross-motions. The administrative law judge, in her Order dated January 11, 2018, denied claimant's motion to compel discovery, granted employer's motion to cancel the March 22, 2018 hearing, and remanded the case to the district director for any further action.³

On appeal, claimant challenges the administrative law judge's decision to cancel the formal hearing and remand the case to the district director. Claimant contends the administrative law judge was required to issue a compensation order addressing her claim for disability and medical benefits. Employer responds, urging affirmance of the administrative law judge's Order canceling the hearing and remanding the case. Claimant has filed a reply brief.

The district director's role under the Act is that of a claims administrator who functions both to process claims and to facilitate their informal resolution "amicably and promptly." 20 C.F.R. §702.301; *see, e.g., Sans v. Todd Shipyards Corp.*, 19 BRBS 24 (1986); *Maine v. Brady-Hamilton Stevedore Co.*, 18 BRBS 129 (1986); *see also* 20 C.F.R. §§702.301 – 702.321. The district director is not empowered to adjudicate disputed claims, and absent an agreement by the parties and a request for a compensation order under

²The administrative law judge stated that because there was no prior Order to pay temporary total disability benefits, she could not order employer to reinstate such benefits.

³The administrative law judge stated that any issues regarding employer's filing of forms LS-206 (Payment of Compensation Without an Award) and LS-208 (Notice of Final Payment) are matters to be addressed at the district director level. Order at 7.

Section 702.315, 20 C.F.R. §702.315, the district director is not empowered to issue a compensation order on factual issues. *Roulst v. Marco Constr. Co.*, 15 BRBS 443 (1983); *see generally Healy Tibbitts Builders, Inc. v. Cabral*, 201 F.3d 1090, 33 BRBS 209(CRT) (9th Cir.), *cert. denied*, 531 U.S. 956 (2000). When the parties do not agree on all issues following informal proceedings, any party may request a formal hearing before an administrative law judge. 20 C.F.R. §§702.316, 702.317; *see Ingalls Shipbuilding, Inc. v. Asbestos Health Claimants*, 17 F.3d 130, 28 BRBS 12(CRT) (5th Cir. 1994); *Irby v. Blackwater Security Consulting, LLC*, 41 BRBS 21, 24 (2007); *Hitt v. Newport News Shipbuilding & Dry Dock Co.*, 38 BRBS 47, 49 (2004).

Once the case is before an administrative law judge, Section 19(c) provides that an administrative law judge “shall” by “order” “make an award” or “reject the claim.” 33 U.S.C. §919(c); *see also* 33 U.S.C. §919(e); 20 C.F.R. §702.348. Pursuant to Section 19(c) and Section 702.348, the Board has held that the administrative law judge’s compensation order must include an “order” directing the payment of benefits in compensable cases. *Aitmbarek v. L-3 Communications*, 44 BRBS 115, 120 n.8 (2010); *see also Davis v. Delaware River Stevedores, Inc.*, 39 BRBS 5 (2005); *Hoodye v. Empire/United Stevedores*, 23 BRBS 341 (1990). However, an administrative law judge may remand the case to the district director when the employer withdraws its controversion to the claim and the parties are in agreement as to the claim’s disposition. 20 C.F.R. §702.351;⁴ 20 C.F.R. §702.315(a); *see Irby*, 41 BRBS at 23.

This case was transferred to the Office of Administrative Law Judges (OALJ) because a dispute arose, initially, over claimant’s refusal to attend a second evaluation with Dr. DeFillipis. Employer filed its March 23, 2017 LS-18 Pre-Hearing Statement to compel claimant’s attendance at medical exams and to sign medical authorizations. Employer stated that it also planned to present the following issues at formal hearing: “nature and extent of disability, if any, entitlement to Section 7 benefits, if any, and [average weekly wage].” Employer also filed a notice of controversion suspending its payment of

⁴Section 702.351 of the regulations states:

Whenever a party withdraws his controversion of the issues set for a formal hearing, the administrative law judge shall halt the proceedings upon receipt from said party of a signed statement to that effect and forthwith notify the district director who shall then proceed to dispose of the case as provided for in § 702.315.

33 U.S.C. §702.351.

compensation because of claimant's failure to act on several of its requests. *See* 33 U.S.C. §907(d)(4). Claimant's Pre-Hearing Statement dated April 6, 2017, presented the following issues for resolution at the formal hearing:

- 1) Payment of TTD/TPD from MMI to present and ongoing;
- 2) Compensability of Claimant's right knee, back, neck;
- 3) Authorization and payment of past, present, and future medical treatment and care of Claimant's right knee, back, and neck;
- 4) Authorization and payment of facet injections;
- 5) Authorization and payment of prescription medication;
- 6) Authorization and payment of right knee MRI;
- 7) Authorization and payment of surgery for right knee;
- 8) Reimbursement of out of pocket medical expenses and medical mileage;
- 9) Penalties and interest; and
- 10) Attorneys' fees and cost.

The administrative law judge granted employer's motion to cancel the formal hearing scheduled for March 22, 2018, because she found there were no disputed issues remaining for resolution in view of employer's reinstatement of temporary total disability benefits.

We cannot ascertain from the administrative law judge's decision or from the record presently before us whether a controversy remains between the parties. *See generally Falcone v. General Dynamics Corp.*, 21 BRBS 145 (1988) (Where employer attempted to withdraw its controversion at the hearing, but the parties were not in agreement, the administrative law judge properly retained jurisdiction of the case.); *see also Hoodye*, 23 BRBS 341 (Because the issues of nature and extent of the claimant's disability were properly before the administrative law judge, the administrative law judge erred by failing to make a determination regarding claimant's right to an award of ongoing temporary total disability benefits.). While employer's voluntary reinstatement of benefits and agreement to compensate claimant for her out-of-pocket medical expenses⁵ appear to resolve some of the parties' disputes, their LS-18 forms indicate that additional disagreements may still exist, e.g., whether claimant's neck, back, bilateral knee and psychological injuries have reached maximum medical improvement (raised by both parties as an issue), whether claimant is entitled to additional medical benefits for her work-related injuries, including, specifically, an MRI and surgery for her right knee injury (raised by claimant), as well as

⁵Claimant apparently sent employer a letter dated July 29, 2013, listing out-of-pocket medical expenses with accompanying invoices. Employer, at the time of the administrative law judge's 2018 Order, had not yet paid those expenses but stated that "as a sign of good faith and in the interest of compromise, the carrier will agree to pay all of the charges listed on the July 29, 2013 letter in final resolution of the claimant's claim for out-of-pocket medical expenses incurred to date." Order at 5.

the calculation of claimant's average weekly wage (raised by employer).⁶ Moreover, it appears that at this juncture, claimant wants a compensation order issued with regard to her claim which protects her in the event employer stops paying compensation. *See* 33 U.S.C. §§918, 921(d), (e), 922; *see also* Order at 6 (“Claimant argued that she requires a formal hearing because the court is required to issue a compensation order even if employer voluntarily pays compensation.”); 20 C.F.R. §702.372. In light of this uncertainty, we remand the case to the administrative law judge to address whether employer has withdrawn its controversion under Section 702.351 and whether the case can be resolved at the district director level without adjudication of any disputed issues. 20 C.F.R. §§702.315(a), 702.351; *see Irby*, 41 BRBS at 23. If the parties are not in agreement and at least one desires a compensation order, the administrative law judge must retain jurisdiction, hold an evidentiary hearing, decide the contested issues, and issue a decision that awards or denies benefits. 33 U.S.C. §919(c); *see also* 33 U.S.C. §919(e); 20 C.F.R. §§702.332, 702.338, 702.339, 702.346, 702.348; *Aitmbarek*, 44 BRBS at 120 n.8; *Hoodye*, 23 BRBS 341; *Falcone*, 21 BRBS 145. If, however, the administrative law judge determines that the parties are in agreement on all issues, the case may again be remanded to the district director for further action. 20 C.F.R. §702.315(a).

⁶The administrative law judge, in her 2018 Order, set out employer's position that “claimant's right knee and back injuries were the basis of the June 16, 2014 hearing.” Order at 5. However, review of the administrative law judge's May 28, 2015 decision resulting from that hearing reveals that the parties disputed only treatment for claimant's work-related left knee injury and back injury. Decision and Order at 3. At that time, the parties agreed, and the administrative law judge found, that claimant's right knee injury was work-related and that “medical benefits other than those currently in dispute [left knee and back] have been paid.” *Id.* at 2. Thus, it is possible that the additional medical benefits claimant sought in her 2017 pre-hearing statement, i.e., for an MRI and surgical procedure to her right knee, were not resolved by that 2015 decision and remain issues in dispute.

Accordingly, we vacate the administrative law judge's Order Granting Employer's Motion to Cancel Hearing and Order of Remand, and we remand the case to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge